Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1995

MARGARET T. IRVING

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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January 12, 1996

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66 pp

The Questions Presented

1. After the District of Columbia Government has billed the record owner in possession of a parcel of real property for taxes covering 6 consecutive years, has accepted a lump-sum payment of liabilities for arrearages in the first 3 of those years, has accepted full payment within the then-current year for each of the next 3 years, and has continuously treated the record owner as the owner for all purposes, can that Government, consistently with due process, then divest that owner of the property by conveying it to a claimant under an unrecorded tax sale certificate generated at a tax sale more than 6 years previously, when the record owner in possession had neither actual nor constructive notice of such sale at the time she made any of her tax payments to the District?

2. The District of Columbia statute governing real property tax sales directs the District to purchase any property offered at such a sale if no other bidder makes a statutorily-defined minimum bid. Neither the statute nor any rule or regulation issued thereunder makes any distinction as between purchases by the District and by other bidders in regard to the effect of the running of the redemption period on the rights of persons claiming an interest in the property. Can the District of Columbia Court of Appeals, consistently with due process, create such a distinction to enable a tax sale claimant to defeat the record owner's defense that the claimant's interest was lost at the expiration of the redemption period on a subsequent sale at which the District was the purchaser?

Parties to the Proceeding
in the
District of Columbia Court of Appeals

MARGARET T. IRVING, APPELLANT

DISTRICT OF COLUMBIA, APPELLEE

VERNA C. ROBINSON, APPELLEE

JAMES H. MOSHOVITIS, APPELLEE

Verna C. Robinson was the sole individual appellee when the case was docketed in the District of Columbia Court of Appeals on September 20, 1993. By order filed September 12, 1994, reproduced herein at A12, the Clerk was ordered to "substitute James H. Moshovitis on the docket in place of Verna C. Robinson, as a party appellee."

There were no corporate parties to the proceeding in the Court of Appeals.

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Citation of opinion and order of the Court of Appeals

Irving v. District of Columbia, 665 A.2d 980 (D.C. 1995). There were no other official or unofficial reports of opinions or orders in the case.

Basis for jurisdiction in this Court

The judgment sought to be reviewed was entered October 16, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

Constitutional and Statutory Provisions

THE CONSTITUTION

Article I, Section 8, Clause 17 (Appendix, A16).

Article V of the Amendments (Appendix, A16).

DISTRICT OF COLUMBIA CODE, 1981 ED.

§ 20–903 (Appendix, A16); § 47–1303(a) (Appendix A17); § 47–1304(a) (Appendix A17); § 47–1306(a) (Appendix A22); § 47–1307(a) (Appendix A22).

Statement of the Case

This is a suit to enjoin the District of Columbia from forfeiting[1] the property of the plaintiff by issuing a tax deed based upon a 1986 tax sale, on the ground that the buyer at that sale no longer has an enforceable right to such a deed, and that the plaintiff, as record owner in possession, would be deprived of her property without due process of law should such a deed be issued.

The property involved in this case was sold, at the January 1986 tax sale conducted by the District of Columbia, to "E C AND OR V C ROBINSON," for delinquent 1985 taxes in the amount of $1,784.82.[2] Its owner of record at the time of that sale was Harold R. Kyles, Jr.,[3] and no payment in redemption of that sale was ever made. The two-year re-

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1. The Court of Appeals has itself characterized the loss of property through the tax sale process as "forfeiture." *Robinson v. Hopkins*, 445 A.2d 958, 959 (D.C. 1982). It is not a process of selling or otherwise transferring existing property interests. As stated in *W.C. & A.N. Miller Development Co. v. Emig Properties*, 134 F.2d 36, 39 (D.C. Cir.), cert. denied 63 S.Ct. 983 (1943) (citations omitted):

> Title evidenced by a tax deed given in compliance with statutory requirements expunges all the interests which spring from the record title and vests in the holder a new and complete title to the property in fee simple.

2. Statement of Material Facts as to Which the Plaintiff Contends There is no Genuine Issue, ¶ 1 Record, p. 39. The interest claimed by the Robinsons was acquired by the Respondent James H. Moshovitis in March of 1994 while this case was pending in the District of Columbia Court of Appeals, and he was substituted as a party by order of the Court of Appeals filed Sep. 12, 1994.

3. Id. Some of the documents in this case refer to him without the "Jr."

demption period[4] expired in January of 1988. An application for a tax deed signed by Mrs. Robinson was submitted to the District in January of 1988,[5] but the application was not accompanied by payment of the taxes which had accrued after the 1986 sale,[6] part of the statutory prerequisites for the issuance of a deed. There is no evidence of any response by the District prior to September of 1990, nor is there any evidence that the Robinsons made any complaint or protest about the delay until Mrs. Robinson filed her cross-claim in the case at bar in August of 1992.[7]

The same property was duly advertised[8] and sold[9] for delinquent 1986 taxes at the January 1987 auction, at which Mr. and Mrs. Robinson made successful bids totalling $544,857.66 on some 359 different properties.[10] Although they made successful minimum bids on the subject property

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4. D.C. Code § 47-1304.

5. Plaintiff's Exhibit H, Record, pp. 60, 61.

6. See the District's tax bill reproduced as Plaintiff's Exhibit A, Record, p. 11, and the interpretation thereof as set forth in the District's corrected answer to Mrs. Irving's interrogatory no. 10 a, Record, p. 167.

7. Answer of Defendant Verna C. Robinson to Plaintiff's Interrogatory No. 12, Record, p. 211.

8. THE WASHINGTON POST, classified advertising, December 20, 1986; THE WASHINGTON TIMES, Delinquent Tax Sale classified advertising supplement, December 19, 1986.

9. Plaintiff's Interrogatory No. 10 a, and the District of Columbia's Answer thereto, Record, p. 167. The same fact was asserted without objection by either defendant in ¶ 20 (Record, p. 165) of plaintiff's statement of material facts supporting her third motion for summary judgment.

10. Report of January 1987 tax sales filed in Office of Recorder of Deeds, Land Records Roll No. 229 at Frame 46.

in the 1988[11] and 1989[12] sales,[13] they did not do so in 1987, and in accordance with law[14] it was purchased by the District of Columbia.[15]

Mr. Kyles, the record owner, died suddenly in an automobile accident on March 4, 1989,[16] and notice of the appointment of Margaret T. Irving, the plaintiff herein, as personal representative of his estate was published on March 30, 1989.[17]

Without knowledge of either the 1986 or the 1987 tax sale, Mrs. Irving made inquiry of the Department of Finance and Revenue on April 28, 1989, as to whether there were any outstanding tax liabilities against the property.[18] She was immediately supplied with a statement showing Harold R. Kyles, Jr. as the owner, and showing taxes, penalties, and interest then due in the amount of $11,403.82. This amount was the total of the liabilities (including penalties and interest where applicable) for the 1987 tax sale (for 1986 taxes) at which the District was the purchaser, the 1988 and 1989 tax sales (for 1987 and 1988 taxes) at which the Robinsons were the purchaser, and all 1989 taxes, plus a penalty for the

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11. Report of 1988 tax sales filed in Office of Recorder of Deeds, Land Records roll 326, frame 261.

12. Report of January 1989 tax sales filed in Office of Recorder of Deeds, Land Records Roll 423, frame 584.

13. These sales were redeemed by Mrs. Irving in her payment to the District on April 28, 1989, Record pp. 11, 12, and 13.

14. D.C. Code § 47–1303(a).

15. Plaintiff's Statement of Material Facts in support of 3rd Motion for Summary Judgment, ¶ 20, Record, p. 165.

16. Affidavit of Margaret T. Irving, ¶ 10, Record, p. 33.

17. Plaintiff's Exhibit M, Record, pp. 110, 111.

18. Affidavit of Margaret T. Irving, ¶¶ 12, 13, 14, 15, and 23, Record, pp. 33, 34, and 37.

decedent's failure to file an information return in 1988.[19] She paid that amount the same day the bill was issued to her.[20]

By deed recorded September 1, 1989, Mrs. Irving conveyed the property from herself as personal representative to herself as heir,[21] and on the same day reported the transfer and recordation to the Department of Finance and Revenue by filing real property transfer and recordation tax returns with the Department.[22] Ever since then, the Department has regularly billed her for real property taxes as they became due.[23] At pages A23 to A25 of the Appendix, there is set forth an analysis, with citations to the record below, of all tax payments (including tax sale purchases and redemptions) related to this property for the tax years 1985 through 1991, inclusive.

Unknown to Mrs. Irving, on September 28, 1990, in apparent response to a communication from the Department of Finance and Revenue, the Robinsons paid the District $6,156.76 as the amount needed in order for them to be issued a deed.[24] In a communication dated November 25, 1991, the Department of Finance and Revenue supplied Mrs. Irving's attorney with an analysis of how this figure was derived.[25]

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19. Plaintiff's Exhibit A, Record, p. 11, as interpreted in the Defendant District of Columbia's answer to Plaintiff's Interrogatory No. 10 a, Record, p. 167.

20. Plaintiff's Exhibits A and B, Record, pp. 11–13.

21. Affidavit of Margaret T. Irving, ¶ 16, Record, p. 34.

22. Affidavit of Margaret T. Irving, ¶ 17, Record, p. 34.

23. Id.

24. Record, pp. 18 and 63.

25. Record, pp. 15, 16.

From a comparison of that analysis with the bill issued on April 28, 1989 and paid by Mrs. Irving,[26] two conclusions are self-evident. First, the District credited the Robinsons with all the payments made by Mrs. Irving for the tax years 1986, 1987, 1988, and 1989, despite the fact that Mrs. Irving's decedent or Mrs. Irving herself had been billed for, and Mrs. Irving had paid, all those taxes, with interest and penalties, back in April of 1989. Second, as to the tax years 1990 and 1991, the District obviously double-billed: it collected from *both* Mrs. Irving *and* the Robinsons the taxes for the first-half of 1990 and all of 1991.

The first hint the District gave Mrs. Irving that anything might be amiss was a note at the bottom of a tax bill issued in June of 1991 as a result of late payment of a bill due in March of that year.[27] The note stated, "There are other prior taxes due - call 727-6441." Upon inquiry as to the meaning of that note, the District advised Mrs. Irving that the property had been the subject of a tax sale to the Robinsons in 1986, but nevertheless continued to bill Mrs. Irving for taxes as they came due.

Some 14 months after its cryptic note, which was never repeated, the District still had neither issued a tax deed to the Robinsons nor told Mrs. Irving whether it would or would not do so.[28] Self-evidently, the mere possibility that it *might* someday do so was enough to render her title unmarketable, and so on August 3, 1992, she filed and served a complaint for an injunction to prohibit the District from issuing any tax deed based on the 1986 tax sale. On August 5, 1992, the District entered into a stipulation that it would not issue any such deed until after the conclusion of the litigation, thus

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26. *Supra*, note 19.

27. Affidavit of Margaret T. Irving, ¶¶ 23-28, Record, p.37; Plaintiff's Exhibit D, Record, p. 14.

28. 2d Amended Complaint, ¶¶ 17-25, Record, pp. 5-7.

obviating any necessity for a temporary restraining order or preliminary injunction.[29]

After notifying the Robinsons' attorney on August 14, 1992 of the pendency of this action, Mrs. Irving filed an amended complaint joining the Robinsons as defendants on August 26, 1992.[30] In that complaint, she described her injuries and raised the federal questions sought to be reviewed here as follows:

THE INJURIES TO THE PLAINTIFF

37. After accepting not only one but a whole series of tax payments made in good faith and allowing Mrs. Irving to invest in the property in reliance upon the District's written representation that she had discharged all tax liabilities against it, it would be grotesquely inequitable for the District of Columbia to issue a tax deed forfeiting the property.

38. Forfeiture of the property under these circumstances would constitute a deprivation of property without due process of law in violation of the Fifth Amendment of the Constitution.

39. The failure of the District of Columbia to resolve this matter by administratively revoking the tax sale certificate has effectively destroyed the value of the plaintiff's interest in the subject property. The mere possibility that a tax deed might be issued pursuant to the said tax sale certificate is self-evidently sufficient to destroy the marketability of the title, and to destroy the economic utility of the property not only to Mrs. Irving but also to the economy of the City of Washington. So long as the threat of forfeiture hangs over it, the subject property is useless as collateral for business or improvement loans,

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29. Record, p. 1.

30. Record, pp. 2–9.

cannot be prudently improved whether or not financing is available, and cannot even be leased on other than a tenancy-at-will basis.

40. The destruction of the value of the property of Mrs. Irving by the threat of forfeiture under the circumstances of this case constitutes a deprivation of property without due process of law in violation of the Fifth Amendment of the Constitution.

The Respondent District of Columbia filed no answer to the complaint. The proposed judgment submitted with Mrs. Irving's first motion for summary judgment provided that she should reimburse the Robinson defendants, as their interests might appear, for Mr. Robinson's January 28, 1986 payment of $1,785.02 and his September 28, 1990 payment of $6,156.76, with interest at 6% from the respective payment dates, and that the District be permanently enjoined from issuing any tax deed based on the 1986 tax sale of the subject property.[31] The District of Columbia executed by counsel an express written consent to the entry of the judgment sought by Mrs. Irving, and that consent was filed in the trial court.[32]

Other than that consent, and motions for enlargement of time in which to respond to discovery requests, the District filed no motion or pleading of any kind in the trial court. At oral argument on the motions and cross-motions for summary judgment which are relevant to this petition, the District appeared by counsel but took no position in regard to the proper outcome other than to assure the court that it would comply with whatever judgment might be rendered.[33]

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31. Record, 30.

32. Record, 119.

33. Transcripts (filed with the Court of Appeals) of March 11 and Sep. 23, 1993, hearings on motions for summary judgment.

In the trial court, Mrs. Irving argued that where the District has taken substantial sums of money in taxes over a period of years on the representation that the party paying the taxes is the owner, it has lost whatever right it might earlier have had to seize the property and convey it to a third party.[34] She further argued that the claim of the Robinsons for a tax deed was a claim against the estate and heir of her decedent, and was therefore barred as untimely by D.C. Code § 20–903.[35]

In opposition to Mrs. Irving's motion for summary judgment, and in support of her own cross–motion for summary judgment, Mrs. Robinson argued that under District of Columbia law, the plaintiff's decedent Harold R. Kyles had lost all interest in the property when the redemption period for the 1986 sale expired in January of 1988, and that despite the fact that no deed had been issued, he therefore had no interest to pass to his estate or heirs when he died in March of 1989.[36]

In denying Mrs. Irving's first motion for summary judgment, the trial court accepted this argument.[37] The court declined, however, to rule at that time on Mrs. Robinson's cross–motion, because Mrs. Irving had filed an Answer to Mrs. Robinson's Counterclaim and Cross–Claim which would raise factual issues, and discovery had not been completed.

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34. Points and Authorities in Support of Plaintiff's Motion for Summary Judgment, Record, 44–58.

35. Id.

36. Points and Authorities of Defendants Verna C. Robinson, et al., In Opposition to Motion for Summary Judgment, Record, 88–90.

37. Transcript (filed with the Court of Appeals) of March 11, 1993 hearing on cross–motions for summary judgment.

In the process of discovery, it was learned that the purchaser at the 1987 tax sale had been the District itself. Mrs. Irving again filed for summary judgment,[38] buttressing the due process claim made in her complaint with the argument that *if* there is an absolute rule that those claiming an interest in such property lose that interest upon the expiration of the relevant redemption period even in the face of equitable considerations and the absence of the issuance of a tax deed, *then* the Robinsons lost their interest, namely their claim to a deed pursuant to the 1986 sale, upon the 1989 expiration of the redemption period for the 1987 sale to the District.[39] Mrs. Irving argued that there was thus no lawful basis for an injunction which would forfeit her interest in the property, by requiring the District to issue a tax deed to the Robinsons.

The trial court held that the rights acquired by the Robinsons upon the expiration of the redemption period on their 1986 purchase were superior to the rights acquired the District upon the expiration of the redemption period on its 1987 purchase.[40] The court apparently based its holding upon the belief that it would be an undue burden on tax sale purchasers to require them to redeem or otherwise act to cancel sales subsequent to their own purchase. Accordingly, the trial court entered a partial summary judgment requiring the District to issue a tax deed to Mrs. Robinson.[41]

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38. This was her third motion for summary judgment. She had earlier filed a second motion on grounds not relevant here, and did not appeal the denial of that motion.

39. Points and Authorities in Support of Plaintiff's 3rd Motion for Summary Judgment, Record, 154–160.

40. Transcript (filed with the Court of Appeals) of the September 23, 1993 hearing in the Superior Court.

41. Id.

The Court of Appeals affirmed the trial court's holding that Mrs. Irving's decedent had lost all interest in the subject property more than a year before his death, when the redemption period on the Robinson purchase had expired, and that therefore she took nothing as his heir.[42]

In response to Mrs. Irving's argument that if that were true, then the Robinsons had lost their interest upon the expiration of the redemption period on the District's 1987 purchase of the property, the Court of Appeals held that the doctrine of loss of interest upon the expiration of the redemption period applies only in the case of a tax sale to a private bidder, and that where the District itself is the successful bidder, the interests of the owner are not extinguished until a deed is issued.[43]

ARGUMENT

INTRODUCTION

In Part I of this Argument, we will present the reasons why we believe that the conduct of the District of Columbia Government, as such, has precluded it, under principles of due process, from forfeiting Mrs. Irving's interest in the subject property and conveying it to the Robinsons or their successors in interest.

In Part II, we will present the reasons why we believe it a denial of due process to refuse to apply against Mrs. Robinson's claim the rule of law invoked against recognition of any property interest on the part of Mrs. Irving.

In Part III, we will offer the additional reasons why, under the criteria set forth in Rule 10 of the Rules of this Court, we believe this petition should be granted.

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42. Appendix, A8; 665 A.2d at 984.

43. Appendix, A6–A7, 665 A.2d at 983.

I.

Mrs. Irving had affirmative written representations by the District that her decedent had been the owner and that she had become the owner. She had a perfect record title. She had neither constructive nor actual notice of any adverse claim on the part of either the District or the Robinsons until more than two years after her appointment as personal representative.[44] As to actual notice, there is her own wholly unrebutted affidavit that she never received any.[45]

As to constructive notice, *Scheve v. Short*[46] explicates the important distinction between a transfer or encumbrance

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44. Supra, note 27.

45. Id.

46. 114 Daily Wash. Law Reporter 2601, D.C. Superior Court, October 29, 1986. At 2611, the court said (footnote omitted)--

> It is significant that [section 47-1307(a)] requires "filing" of the tax sale report, not "recording." This distinction makes sense. The tax sale report is an extremely voluminous document, the complete copying of which would be quite onerous. Moreover, it would be largely pointless.
>
> The testimony in this trial showed that, of all the properties sold at the tax sale each year, approximately 97-98% are redeemed by the record owners within the two year redemption period. Only two or three percent of the "sales" described in the tax sale report actually mature into transfers of title. When that happens, the tax sale purchaser is issued a deed by the District of Columbia, and such deeds are entitled to be recorded as are any other deeds. To this Court it seems quite appropriate that the tax sale reports need only be filed with the Recorder of Deeds and available for public inspection, rather than laboriously microfilmed and indexed, since 97-98% of these reports will have no legal effect within two years of their preparation. In short, the legislature's choice of terms--"filing" rather than "recording"--appears intentional and sensible.

which is "recorded" in the Office of the Recorder of Deeds and one which is merely "filed" there. The annual report of tax sales is filed pursuant to D.C. Code § 47–1307, but is not recorded in the office of the Recorder of Deeds. The certificate of sale is not even filed there. Unlike deeds of bargain and sale, tax deeds, deeds of trust, judgment liens, and other transfers and encumbrances of property, there is no index either by name of the record owner of the affected property or its square and lot number. Moreover, there is no indication either filed or recorded in that office as to whether any given tax sale has been redeemed by a payment made within the redemption period. Only when a deed is issued is there a document which can be recorded and indexed so as to give constructive notice that a tax sale has taken place.

The tax bills, first in the name of her decedent and afterwards in her own name, which the District issued to Mrs. Irving were clearly intended to induce her to pay those taxes, as in fact she did. At pages 15 and 16 of her brief in the Court of Appeals, Mrs. Irving delineated one of the constitutional issues sought to be reviewed here as follows (footnotes renumbered):

> Mrs. Robinson demands an equitable remedy, an order directing the District to issue a deed to her. It is one of the most elementary principles of equity jurisprudence that those who seek equity must do equity. She demands that she be accorded the benefits of ownership of the property dating from January 29, 1988, yet admits that she has never made any effort to assume the burdens and responsibilities of ownership.[47]
>
> In the circumstances of the case at bar, we think the error of the court below rises to a constitutional

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47. Mrs. Robinson's answers to plaintiff's interrogatories numbered 10, 11, 12, 13, 14, 15, and 16, Record, pp. 211–213.

dimension.[48] If all that had happened to Mrs. Irving was that the District took her payment for past due taxes, that would be an error which could be rectified by refunding the erroneously collected money. But after the District had collected that very substantial payment, and after Mrs. Irving had informed the Department of Finance and Revenue in writing that she was the owner of the property in question, the District continued to recognize her ownership by billing her for taxes subsequently accruing, and by requiring reports from her in her capacity as owner.

All of this induced Mrs. Irving to carry the burdens of ownership and maintenance of property in a high-crime, high-risk area of the City, to the obvious benefit of the community as well as the pecuniary gain of the municipal government.[49] For the years after the untimely death of her son, it was not just her money but her life that was being invested and incorporated in this property. The transfer which Mrs. Robinson demands requires an overt act on the part of the *government*, the issuance of a tax deed divesting Mrs. Irving of all interest in the property no matter how or when acquired. There is no way that the divestiture which Mrs. Robinson demands can be reconciled with due process. As for the interest of Mrs. Robinson, she concedes that all she and her husband ever put into the property was what they paid the District, and under the disposition proposed by the plaintiff and agreed to by the District in the court below, she would be fully reimbursed.

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48. Amended Complaint, ¶ 40, Record, p. 10, citing the Fifth Amendment to the Constitution.

49. Affidavit of Margaret T. Irving, ¶¶ 19, 20, 21, and 22 (Record, pp. 35–37).

By the time the District finally informed Mrs. Irving of the Robinsons' claim, she had long since made irrevocable decisions and commitments.[50]

The opinion of the Court of Appeals attempts to finesse this issue by declaring that Mrs. Irving's decedent was divested of all interest in the property upon the expiration of the redemption period on the Robinsons' purchase and their application for a deed, and that thus at his death he had no property to pass to his estate or heirs.[51] Centuries of theory and practice in respect of real property and the requirements for its conveyance are not so lightly to be cast aside. Moreover, even a possessory interest may be entitled to constitutional protection. *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).

There are serious factual errors near the beginning of the Court of Appeals opinion, and while they do not control the result, they do tend to create a climate prejudicial to Mrs. Irving. After noting that the owner at the time of the 1986 tax sale to the Robinsons had not redeemed the property, the court stated:[52]

> Consequently, after the two-year redemption period expired in 1988, the Robinsons applied for a tax deed on the property by surrendering to the Department of Finance and Revenue the tax sale certificate they had received, *along with the money to pay the outstanding*

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50. Part of the estate suddenly and unexpectedly thrust upon Mrs. Irving was the stock of a small incorporated funeral home occupying the property here at issue. The state of the title to the real estate had a direct bearing on what to do with the funeral business, and had Mrs. Irving known of the Robinsons' claim, she would have made different decisions. Affidavit of Margaret T. Irving, ¶ 19, Record, p. 35.

51. Appendix A8; 665 A.2d 980 at 984.

52. Appendix, A2-A3; 665 A.2d at 981-982.

> *amount of taxes, penalties, and interest. See* D.C. Code § 47–1304 (a). However, because of a large administrative backlog in the Department of Finance, the Robinsons had not yet received a deed by the time this action was begun in 1992. *In the meantime, the Robinsons continued to pay the taxes on the property as they came due.*[53] [emphasis added]

The Robinsons made no payment whatsoever at the time they submitted their application for a deed, nor did they pay taxes on the property as they became due. Unless, by truly Kafkaesque reasoning, the Robinsons were given credit for payments made by Mrs. Irving in good faith reliance upon the representations of the District that she was paying taxes on property belonging to her decedent's estate or herself, the Robinsons *never* satisfied the statutory requirement that all tax liabilities be satisfied before a tax deed can be issued. Moreover, even if the Robinsons are given credit for Mrs. Irving's payments, this explicit statutory condition precedent was not fulfilled until September 28, 1990, more than a year and a half after Mrs. Irving's appointment as personal representative, and long after the statutory deadline for claims against the estate had passed.[54] At pages A23–A25 of the Appendix to this Petition, we have set out exactly what payments in respect of taxes were made, and when they were made, by each party for each relevant year.

In support of its holding, however, the Court of Appeals cites District of Columbia cases which make the foregoing

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53. This error is repeated in note 6, App. A7; 665 A.2d at 983, n.6.

54. Notice of Mrs. Irving's appointment as Personal Representative was first published March 30, 1989, and in accordance with D.C. Code § 20–903, it stated that all claims would be forever barred unless presented on or before September 30, 1989. Plaintiff's Exhibit M, Record 111.

factual errors irrelevant and make it extremely unlikely that a different result would have been reached had they been called to the court's attention in a petition for rehearing. These cases quite clearly hold that neither the application for a tax deed nor the payment of outstanding tax liabilities is necessary to divest all pre-existing interest in the property. Assuming that the necessary formalities attending the auction have been complied with, as is conceded in this case, those cases hold, as we believe does the case at bar, that the expiration of the redemption period is both necessary and sufficient to effect such divestiture.[55]

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55. The Court of Appeals opinion, at App. A8, 665 A.2d at 984, cites *Industrial Bank of Washington v. Sheve*, 307 F. Supp. 98 (D. D.C. 1969). That case, however, explicitly states that the lienor's challenge was mounted before there had been any application for a deed.

In the same vein, and even more compellingly, App. A8, 665 A.2d at 984, the Court of Appeals quotes from *Malone V. Robinson*, 614 A.2d 33, 35 n. 4 (D.C. 1992) in holding that Mrs. Irving's "claim 'cannot affect [the Robinson's] rights as the purchasers at the tax sale, which accrue upon expiration of the redemption period.'"

Malone v. Robinson in turn, in the note cited and quoted from above, cites with approval *District of Columbia v. All of Lot 9, Square 5148*, 110 Daily Washington Law Reporter 469 (D.C. Superior Court, 1982. That opinion is set out in full at pages A26-A32 of this petition. The court observed, at A28,

> Importantly, as far as [the] present argument [of the record owner claiming the proceeds of a condemnation] is concerned, the condemnation took place before the tax sale purchasers applied for [their] deeds . . . .

The court expressly noted that the claimant tax sale purchasers could have lost their interest to a subsequent tax sale purchaser, but there was no such subsequent purchaser in that case. The court then held, at A32--

While the application of that rule did not necessarily raise a constitutional question in the specific factual contexts of the prior cases in which it has been invoked, we believe that it does raise such a question in this case.[56] The only way that Mrs. Irving can be denied the protections of the Probate Reform Act (protections which in this case would obviate the necessity to address her due process claim) is to hold not merely that the Robinsons acquired a valid *claim* (which is a type of personal property) to the real estate, but that they had already acquired the real property itself. To hold otherwise would be to defeat the plain words of the Probate Reform Act:

> **§ 20–903. Limitation on presentation of claims against the estate.**
>
> (a) *Requirement of presentation; time; limitation.*––Except as otherwise expressly provided by statute with respect to claims of the United States and the District of Columbia, (1) all claims against a decedent's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, shall be barred against the estate, the personal representative, and the heirs and legatees, unless presented within 6 months after the date of the first publication of notice of the appointment of a personal representative . . . .

> Accordingly, this Court must conclude that as [the record owner] lost all interest in [the subject property] when he did not redeem within the statutory period, he (or his estate) has no claim to the proceeds of the subsequent condemnation.

56. In neither *Industrial Bank of Washington v. Sheve* nor *District of Columbia v. All of Lot 9, Square 5148* was there any suggestion that the District Government had ever misled any taxpayer or otherwise failed in its administrative duties.

Under our system of law, the result sought by the Robinsons can, in appropriate circumstances, be reached by applying the doctrine of equitable conversion, under which personal property, e.g., a claim, can be treated as if it had already been converted into the object of that claim, in this case, ownership of real property. At page 7 of her Reply Brief in the Court of Appeals, Mrs. Irving discussed this issue as follows:

> While the term "equitable conversion" has not been used in the tax sale opinions of this Court, we believe that its underlying principles are relevant to the analysis of cases in which the timing and effect of transfers of ownership pursuant to tax sales are in issue. As stated in the opening paragraph on the subject in [27 AM.JUR.2d, *Equitable Conversion* § 1]:
>
> > The doctrine of equitable conversion . . . is not a fixed rule of law but proceeds on equitable principles that take into account the result to be accomplished. It is a mere fiction, resting on the principle that equity regards things which are directed to be done as having actually been done where nothing has intervened which ought to prevent performance. [footnotes omitted]
>
> We think that in situations where death has intervened before a deed has been issued, the strong and unequivocally expressed policy of the Probate Reform Act § 20–903 raises a significant question as to whether "all ownership interest" has passed so as to leave a distributee with no defense under any statute of limitations against a claim first asserted years after distribution has taken place, especially where the claim is against property in which the distributee has made a substantial investment.

The trial court in the case at bar correctly interpreted the Court of Appeals as having said in *Malone v. Robinson* that

it is simply irrelevant what the District Government does or fails to do following the expiration of the redemption period.[57] While the administrative malfeasance of the District is probably more serious and certainly better documented in the case at bar than it was in *Malone*, the principle expressed by the Court of Appeals in the two cases is the same: what the District did to the taxpayers is no bar to its forfeiting all their interests in the subject properties. The tax sale process is radically different from a foreclosure process. Only the sovereign can impose a forfeiture, and holding that it can do so irrespective of its own intervening malfeasance is the very antithesis of affording due process of law.

To avoid the constitutional question which Mrs. Irving's due process claim would otherwise raise, we respectfully urge that the doctrine of equitable conversion should neither explicitly nor implicitly be applied to abrogate the express command of the Probate Reform Act.

II.

If it is a correct reading of current District of Columbia law that the 1988 expiration of the redemption period on the Robinsons' 1986 purchase extinguished the property interest of Mrs. Irving's decedent, *then* we respectfully urge that the property interest so acquired by the Robinsons must be held

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57. Transcript of March 11, 1993 hearing in the Superior Court, page 21. In remarks from the bench, the court cited and quoted *Malone*, 614 A.2d 33, n.4 at 35:

> Estoppel against the District, however, cannot affect appellee's rights as the purchaser at a tax sale, which accrue upon expiration of the redemption period. D.C. Code § 47–1304. *See Industrial Bank of Washington v. Sheve*, 307 F. Supp. 98 (D.D.C. 1969); *District of Columbia v. All of Lot 9, Square 5148*, 110 Daily Wash. L. Rptr. 469 (D.C. Super. Ct. March 4, 1982); *cf. Robinson v. Hopkins*, 445 A.2d 958 (D.C. 1982).

to have been equally extinguished by the 1989 expiration of the redemption period on the District's 1987 purchase.

The crux of the Court of Appeals holding on this point is its statement at Appendix A6–A7, 665 A.2d at 983:

> Notwithstanding the District's bid–off, an owner or other interested party is not divested of any interest in the property until a deed is actually issued, even after the two–year redemption period has expired.

This is a proposition which is nowhere to be found in any of the briefs or arguments presented in either the Court of Appeals or the Superior Court. We have searched in vain to find it in any statute, rule or regulation, or even in any published interpretation or opinion of any officer of the District government. If, as this Court has stated,[58] "The courts may not accept appellate counsel's *post hoc* rationalizations for agency action . . . . " it certainly cannot be acceptable for courts to indulge in such rationalizations *sua sponte*.

The Court of Appeals opinion uniformly refers to the Robinsons' action at the 1986 sale as a purchase, whereas it generally refers to the District's action at the 1987 sale as a bid–off. This semantic device tends to foster an impression that the District merely withdraws the property from sale, whereas private bidders actually purchase it. The statute,[59] however, is directly to the contrary:

> In case no other person bids the amount due, together with penalties and costs, on any lot, the . . . Collector of Taxes shall bid the amount due, together with

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58. *Burlington Truck Lines, Inc. v. United States et al.*, 371 U.S. 156, 163, 83 S.Ct. 239, 246, 9 L.Ed.2d 270 (1962), citing *Securities & Exchange Comm'n v. Chenery Corp.*, 332 U.S. 194, 196, 67 S.Ct. 1575, 1577, 91 L.Ed. 1995 (1947).

59. D.C. Code § 47–1303.

> penalties and costs, on the same and purchase it for the District.

While the quotation from the statute in note 2 of the opinion includes the command, "and purchase it for the District," the rest of the opinion ignores the existence of that command.

The opinion cites no provision of the statute, and we have been able to find none, which provides that the effect of the expiration of the redemption period on the rights of those having an interest in the property is any different in the case of a purchase by the District from what it is in the case of a purchase by a private bidder.

In support of its holding, the Court of Appeals cites[60] *Massie v. District of Columbia*, 634 A.2d 1226 (D.C. 1993), but that is difficult to understand, since in *Massie* the court sustained[61] the "last in time, first in right" rule universally applied to successive tax sales, the very rule which is fatal to the Robinsons' claim. At App. A6, 665 A.2d at 983, the Court of Appeals makes a vague reference to legislative history cited in *Massie*, but that history relates to the effect of the issuance of a tax deed, not to whether the character of the purchaser as private or District can change the effect of the expiration of the redemption period.

The holding of the Court of Appeals is inconsistent with the statutory command that tax-delinquent property be sold at successive annual sales as long as there are delinquencies. It is the impending divestiture of interest at the end of the redemption period that gives the tax sale its bite, and the effectiveness of such sales as an incentive to the payment of taxes is self-evidently compromised when the District is a purchaser if, as the Court of Appeals holds, App. A6-A7, 665 A.2d at 983:

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60. App. A6, 665 A.2d at 983.

61. 634 A.2d 1226, 1228, n. 5.

> [A]n owner or other interested party is not divested of any interest in the property until a deed is actually issued, even after the two-year redemption period has expired.

The Court of Appeals opinion seriously misstates Mrs. Irving's position when it says, App. A4, 665 A.2d at 982:

> Mrs. Irving claims that the Robinsons lost their interest in the property by failing to bid on it at the 1987 sale.

In her principal brief, Mrs. Irving observed that bidding at the 1987 sale would have been one of the means by which the Robinsons might have preserved their interest, but she was at pains to point out that it was not the only means nor did she characterize it as the best means. At pages 9 and 10 of that brief, she said (footnotes renumbered):

> In the case at bar, the [trial] court appears to have been influenced by the argument that the failure of the District to respond promptly to the Robinsons' application for a tax deed somehow hindered them from making the tax payments that would have avoided or canceled the 1987 tax sale. If the Robinsons wanted to discharge the tax liabilities which accrued in 1986 and for which the property was publicly sold in 1987, they had multiple opportunities to do so. There was no need for them to wait for the District to respond to their application for a tax deed.
>
> The Robinsons could, with complete safety, have bought at the 1987 sale and eliminated any risk of loss, just as they in fact did at the 1988[62] and 1989[63] sales. Whether by accident or design, they

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62. Report of the January 1988 tax sales filed in the Office of the Recorder of Deeds, Land Documents Roll 326, Frame 261.

63. Report of the January 1989 tax sales filed in the Office of the Recorder of Deeds, Land Documents Roll 423, Frame 584.

> failed to do so, but that was by no means their last chance to protect themselves. At any time prior to the January 1989 expiration of the redemption period for the 1987 sale to the District, they could have inquired of DFR [the Department of Finance and Revenue] what tax liabilities were due against the property. In accordance with the established practice of DFR they would have immediately received a statement, just as Mrs. Irving did on April 28, 1989,[64] showing them exactly what they would have to pay to redeem the 1987 sale. Timely payment would have canceled that sale, leaving them in full possession of the vested interest they had acquired the year before. As a lawyer with ample experience in tax sale transactions, Mr. Robinson[65] was certainly chargeable with knowledge of the interest that he and Mrs. Robinson held after the January 28, 1988 expiration of the redemption period for their 1986 purchase.

District of Columbia case law makes it clear that any time a person is in the position that the Robinsons occupied at the end of January 1988, holding a tax sale certificate on property on which the redemption period has expired, that person has an interest in the subject property. D.C. Code § 47–1306(a) provides an open, explicit, standing invitation to that

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64. Plaintiff's Exhibit A, Record, p. 11; Affidavit of Margaret T. Irving, ¶¶ 12 and 13, Record, p. 33.

65. Plaintiff's Statement of Material Facts ¶ 17, Record, p. 42; Plaintiff's Exhibit J (four tax deeds issued to the Robinsons between June 17, 1986, and Feb. 18, 1988), Record, pp. 64–80; Plaintiff's Exhibit K (Letter from supervisor, membership office of the District of Columbia Bar, regarding admission to the bar of Elbert C. Robinson), Record, p. 82; Plaintiff's Exhibit L (complaint and final judgment in suit to quiet title to tax-deeded property, filed in Superior Court by Elbert C. Robinson), Record, pp. 83–87.

person to protect that interest against the effect of a subsequent tax sale (emphasis added):

> (a) The owner of any property sold as aforesaid, *or any other person having an interest therein at the time of redemption*, may redeem the same from such sale at any time within 2 years after the last day of sale by paying to the Collector of Taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of 12 per centum per annum after the date of such certificate of sale.

Mrs. Irving restated her position one final time at page 5 of her Reply Brief:

> [T]here is nothing in the law which immunizes a property from successive tax sales when the taxes have not been paid, and there is nothing in the law which grants to the first tax sale purchaser, if he has not for whatever reason acquired a deed, an immunity to the consequences of such a sale that he would not enjoy if he were an owner in fee simple absolute.

Mrs. Irving initiated this litigation for one purpose, and one purpose only. She seeks an injunction to protect her record title and possessory interest from the threat posed by the Robinsons' 1986 Certificate of Sale for Taxes in the light of the District's refusal to revoke or cancel that certificate. To deny her the protection of the Probate Reform Act on the ground that the expiration of a tax sale redemption period divested her decedent of all interest in the property, while in the same case denying her the benefit of that rule in defense of her property interests against the claim of the Robinsons, represents a decision so inherently arbitrary, capricious, and self–contradictory as to constitute a denial of due process.

III.

The Constitution grants to Congress power "[t]o exercise exclusive legislation in all cases whatsoever" over the District of Columbia.[66] With that grant goes an inescapable federal responsibility that governmental power, no matter how delegated, be exercised here within the bounds of the Constitution.[67] The result in the case at bar is not a sport or random accident affecting only the parties to this litigation, but evidence of a serious flaw which has developed in the jurisprudence of the District.

That flaw is a refusal on the part of the judiciary to recognize the governmental role and attendant responsibility in the administration of the system of real property taxation. As recognized by the trial court, the precedents in this jurisdiction proclaim that upon the expiration of the redemption period, irrespective of whether the tax deed claimant has complied with the requirements for the issuance of a deed, the record owner is divested of all interest in the property sold at a tax sale.

What this judicial policy does is to shift to the post-tax sale record owner the whole burden of loss no matter how outrageously the District has misled her, no matter how conscientiously or how long she has borne the responsibilities of ownership, no matter how deficiently the District maintains the public record of the state of the title, in short, no matter how abjectly the District may have failed in its obligations to a post-tax sale record owner, nothing can bar the District from issuance of the deed. The principle involved goes well beyond the facts of this case. It converts the doctrine of equitable conversion, a judicial device intended to promote

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66. Article I, Section 8, clause 17.

67. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 581, 82 S.Ct. 1459, 1489, 8 L.Ed.2d 671 (1962), citing *Kendall v. United States* ex rel. *Stokes*, 12 Pet. 524, 619, 9 L.Ed. 1181.

the achievement of justice under law, into a juggernaut rolling heedless of injustice.

The private respondent in this case has argued that the District failed in its duty to respond in a reasonable time to her application for a tax deed.[68] There is merit in that contention, but the remedy she demands is essentially equitable in nature: she demands to be put in the position she might have achieved had that failure not occurred. Where the government has failed each of two competing parties, however, the remedy for the one cannot be purchased at the price of a denial of due process for the other. That is what has been done by the decision of the Court of Appeals.

We respectfully submit that the state of the law within the nation's capital has a symbolic as well as substantive significance which strongly supports the exercise of this Court's power of review via certiorari when there may be a serious departure from the norms of due process or the even-handed interpretation and application of statutory provisions.

We therefore urge that this petition be granted.

Respectfully submitted,

Grasty Crews, II
Counsel for Petitioner

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68. Brief of appellee Robinson in the Court of Appeals, 10 et seq.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 93-CV-1205

MARGARET T. IRVING, APPELLANT

v.

DISTRICT OF COLUMBIA, *et al.*, APPELLEE

Appeal from the Superior Court of the

District of Columbia

(Hon. Ellen S. Huvelle, Trial Judge)

(Argued November 22, 1994 Decided October 16, 1995)

Grasty Crews, II, for appellant.

Leonard C. Collins for appellees Robinson and Moshovitis.

Vanessa Ruiz, Corporation Counsel at the time the briefs were filed, *Charles L. Reischel*, Deputy Corporation Counsel, and *Lutz Alexander Prager*, Assistant Deputy Corporation Counsel, filed a statement in lieu of brief for appellee District of Columbia.

Before WAGNER, *Chief Judge*, and TERRY and SCHWELB, *Associate Judges*.

TERRY, *Associate Judge*: Appellant challenges a trial court order requiring the District of Columbia to issue a tax deed to Verna Robinson for a piece of real property which Mrs. Robinson and her late husband purchased in a 1986 tax sale. Appellant claims that the trial court erred because the Robinson's interest in the property had been extinguished following a "bid-off" of the same property by the District of Columbia at a tax sale in 1987. Alternatively, appellant argues that the Robinsons' claim to a tax deed is barred by the Probate Reform Act, by equitable principles, and by due process concerns. Finding no trial court error and no merit in appellant's other arguments, we affirm.

I

On January 28, 1986, Elbert and Verna Robinson successfully bid on a piece of real property which the District of Columbia auctioned off for non-payment of property taxes.[1] The Robinsons purchased the property, located at 1622 Eleventh Street, N.W., for $1,784.82, the amount of delinquent taxes for Tax Year 1985. In January 1987 the property was auctioned off again for nonpayment of the 1986 taxes. This time it was purchased by the District of Columbia pursuant to D.C. Code § 47-1303(a) (1990), which requires the District to "bid off" property if no other person bids the amount due in taxes.[2]

During the two years following the Robinsons' purchase, no effort was made by the owner of record, Harold R. Kyles, to redeem the property as permitted by D.C. Code § 47-1306. Consequently, after the two-year redemption period expired in 1988, the Robinsons applied for a tax deed on the property by surrendering to the Department of Finance and Revenue the tax sale certificate they had received, along with

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1. The Robinsons purchased the property as tenants by the entireties. Mr. Robinson died in 1992, and Mrs. Robinson continued in the case both in her individual capacity and as personal representative of her husband's estate. While this appeal was pending, Mrs. Robinson assigned her interest in the property to James H. Moshovitis, who was then added as an appellee.

2. D.C. Code § 47-1303 provides in pertinent part:

> Upon the day specified . . . the Mayor of the District of Columbia shall proceed to sell or cause to be sold [at auction] any and all property upon which [real property] taxes remain unpaid . . . . In case no other person bids the amount due, together with penalties and costs, on any lot, the . . . Collector of Taxes shall bid the amount due, together with penalties and costs, on the same and purchase it for the District.

the money to pay the outstanding amount of taxes, penalties, and interest. *See* D.C. Code § 47–1304(a). However, because of a large administrative backlog in the Department of Finance, the Robinsons had not yet received a deed to the property by the time this action was begun in 1992. In the meantime, the Robinsons continued to pay the taxes on the property as they came due.

Meanwhile, in March 1989, Mr. Kyles died in an automobile accident, and his mother, appellant Margaret Irving, was appointed the personal representative of his estate. In April 1989, unaware that the property had been the subject of a tax sale, Mrs. Irving asked the Department of Finance whether there were any outstanding tax liabilities against the property. The Department of Finance gave her a bill for the unpaid taxes, penalties, and interest due in the amount of $11,403.82, which Mrs. Irving promptly paid. She had no knowledge of the Robinsons' interest in the property until June 1991, when she received a bill stating, "There are other prior taxes due." Upon further inquiry at the Department of Finance, Mrs. Irving learned that the Robinsons had purchased the property at the 1986 tax sale.

Mrs. Irving then filed the instant suit to enjoin the District from issuing a tax deed to the Robinsons,[3] and the District agreed not to do so until the dispute had been settled. After the Robinsons answered the complaint, the parties filed cross–motions for summary judgment. The trial court, after two hearings, granted partial summary judgment for Mrs. Robinson,[4] ordering the immediate issuance of a tax deed to her upon payment to the District of all amounts still owed on the property. All monetary claims were left to be resolved at

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3. The District of Columbia was originally the only defendant. The Robinsons were added later as additional defendants in an amended complaint.

4. By this time Mr. Robinson had died.

a later time. The parties subsequently agreed on a settlement, contingent on the outcome of this appeal, and a final judgment was entered. Mrs. Irving then noted the instant appeal.

II

The District of Columbia is authorized by statute to sell real property for non-payment of property taxes. Under D.C. Code § 47-1304(a), the District must sell all property for which taxes are in arrears to the highest bidder at public auction. Once the winning bid is paid, the Collector of Taxes must issue to the purchaser a certificate of sale. The owner of record may redeem the property within two years after the sale by paying the District the amount for which the property was sold. If the owner does not do so, the purchaser then has three more years in which to apply for a tax deed to the property. Once these conditions are met and the purchaser applies for the deed and pays all taxes and penalties owed, "a deed *shall* be given by the Mayor . . . to the purchaser at such tax sale . . . or to the assignee of such certificate [of sale] . . . . D.C. Code § 47-1304(a) (emphasis added). If there is no successful bid at the tax sale, the District of Columbia must bid in its own name the amount due, including penalties and interest. D.C. Code §§ 47-1303, 47-1304(a). If the property is thus bid off by the District, the owner of record may still redeem it within the two-year redemption period. D.C. Code § 47-1304(a).

The record shows that the Robinsons complied with all the statutory requirements when they purchased the property at the 1986 tax sale. Mrs. Irving does not contest the validity of that sale. Rather, she argues that at the end of the two years following the District's bid-off of the property in 1987, the District acquired immediate ownership of the property, thereby divesting the Robinsons of the "conditional interest" in it which they had acquired in the 1986 sale. Mrs. Irving claims that the Robinsons lost their interest in the property by failing to bid on it at the 1987 sale. She bases her argument

on *Gray Properties Inc. v. Tobriner*, 123 U.S. App. D.C. 150, 357 F.2d 829 (1966), which held that tax sale purchasers must protect their right to the issuance of a tax deed by making certain that the property is not subject to another tax sale. We hold that *Gray Properties* is distinguishable and of no help to Mrs. Irving in this case.

In *Gray Properties* the appellant was the assignee of a tax sale certificate which covered unpaid taxes on the property for fiscal year 1958. The taxes for the following three years also went unpaid, and in each of those years the District, pursuant to the statute, bid off the property in its own name, since no one else came forward to buy it at the three annual auctions. In 1963 the District sold the property in a private sale and issued a deed to the new purchaser, George Trivers. Gray Properties, the assignee of the tax sale certificate, maintained that the sale to Trivers was invalid, asserting that it had five years from the date of the sale in which to apply for the deed. The court rejected this argument and upheld the sale to Trivers. It recognized that "[u]nder the statute, the purchaser of a tax sale certificate does have certain rights with reference to the property covered by the certificate," including the right to "obtain a tax deed to the property [within three years after the owner's redemption period has expired] by paying all of the taxes and charges then due and owing." Nevertheless, the court held:

> If . . . the property is the subject of another tax sale *which results in the issuance of a tax deed*, the tax deed expunges all other interests in the property and "vests in the holder a new and complete title to the property in fee simple."

123 U.S.App.D.C. at 151, 357 F.2d at 830 (citations omitted; emphasis added). The court warned that it was the certificate holder's responsibility to make sure that the property was not sold at another tax sale. *Id.*

Gray Properties is readily distinguishable from the case at bar. Although the facts of the case, as summarized in the opinion, are scant, it is clear that Gray Properties failed to apply for a tax deed at the end of the redemption period; in fact, the taxes remained delinquent for an additional three years. Moreover, in *Gray Properties*, the District actually sold the property to a third party and issued a deed to that purchaser. In the instant case, by contrast, the Robinsons protected their rights by applying for the deed at their first opportunity to do so, immediately after the expiration of the two-year redemption period. Additionally, the District has neither sold the property nor issued a deed to a third party. Thus Mrs. Irving's reliance on *Gray Properties* is unavailing.

We are not persuaded by Mrs. Irving's argument that at the expiration of the redemption period following the District's bid-off of the property in 1987, the Robinsons were divested of the rights they had acquired in 1986. Mrs. Irving assumes that since the statute authorizes the District to transfer immediate ownership when it sells property at a private sale, it must have already acquired complete ownership at the end of the redemption period. We find nothing in the statute, however, to suggest that the District has ownership rights superior to those of one who purchased the property at an auction occurring a year before its own purchase. In fact, we have previously held that "the ordering of and issuance of the deed to the District is the step that is intended to vest the District's rights *vis à vis* other claimants." *Massie v. District of Columbia*, 634 A.2d 1226, 1229 (D.C. 1993).[5] Notwithstanding the District's bid-off, an owner or other interested

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5. In the instant case Alfred L. Richards, a supervisor at the Department of Finance, stated in an affidavit that the Department is under an obligation to issue a deed to the first applicant, even though a later applicant's request may be based on a sale that occurred before the sale to the first applicant.

party is not divested of any interest in the property until a deed is actually issued, even after the two-year redemption period has expired. *See id.* (citing legislative history). Moreover, the statute does not require a purchaser at a tax sale to pay the taxes each year thereafter to protect his or her interest.[6] We agree with the trial court that, if a purchaser were required to repurchase the property each year, there would be no need for the five-year statutory cutoff period. We hold that the Robinsons, once they had complied with all the statutory requirements at the 1986 tax sale, acquired a conditional interest in the property which was not divested by the District's subsequent bid-off in 1987.

Having concluded that the Robinsons were the only parties with an interest in the property at the end of the redemption period, we reject Mrs. Irving's alternative argument that the Robinson's claim is barred by the Probate Reform Act because they did not file a claim against Mr. Kyles' estate pursuant to that Act. Since Mr. Kyles no longer had any interest in the property after his redemption period expired in 1988, his estate could not acquire any interest in the property upon his death in 1989. There was thus no need for the Robinsons to make a claim against his estate.

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6. A prudent purchaser, however, would be well advised to do exactly that (as the Robinsons did), so as to avoid being superseded by a subsequent purchaser:

> [T]o fully protect its right to obtain a tax deed, the prior tax sale purchaser must "make certain that the property [is] not again the subject of a tax sale" by paying the taxes as they become due.

Massie, supra, 634 A.2d at 1228 (citing *Gray Properties*, 123 U.S. App. D.C. at 151, 357 A.2d at 830). We note also that the District "cannot protect its interest as a private tax sale purchaser could," since under the statute it must resell the property every year. *Massie*, 634 A.2d at 1228.

Finally, Mrs. Irving argues that the Robinsons' claim to the property is barred by equitable principles and due process considerations. She asserts that she assumed the burdens and responsibilities of ownership by paying the taxes and maintaining the property, and that the District recognized her ownership interest when it billed her for subsequent tax assessments. We cannot and do not decide whether Mrs. Irving might have an equity-based claim against the District for money she spent on the property in reliance on any supposed representations by the District that she was the rightful owner. Whether she does or not, such a claim "cannot affect [the Robinsons'] rights as the purchaser[s] at the tax sale, which accrue upon expiration of the redemption period." *Malone v. Robinson*, 614 A.2d 33, 35 n.4 (D.C. 1992). Moreover, reliance by Mrs. Irving on any alleged representations by the District clearly would not rise to the level of a constitutional right, since neither she nor Mr. Kyles retained any rights, constitutional or otherwise, in the property once the redemption period had expired. *See Industrial Bank of Washington v. Scheve*, 307 F. Supp. 98, 100 (D.D.C. 1969).[7] We hold that the Robinsons' conditional interest in the property became absolute in 1988, when they applied for a tax deed after Mr. Kyles' failure to redeem the property within the two-year statutory period. Thus Mrs. Robinson (or her assignee) is entitled to issuance of the tax deed. *Massie, supra*, 634 A.2d at 1229.

The judgment of the trial court is therefore

Affirmed.

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7. We note that Mrs. Irving has never challenged the validity of the sale to the Robinsons.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 93-CV-1205

FILE
FEB 24 1994
COURT OF APPEALS

MARGARET T. IRVING,
Appellant,

v.

CA10322-92

DISTRICT OF COLUMBIA,
ET AL.,
Appellees.

BEFORE: Steadman, Associate Judge, and Pryor and Mack, Senior Judges.

ORDER

On consideration of appellant's motion for expedited consideration, appellee District of Columbia's motion for leave to file a response, and appellant's opposition thereto, the lodged response and appellant's reply thereto, appellant's motion for summary reversal, appellee Robinson's motions for an extension of time to file his response and the lodged response and appellant's reply thereto, and appellee District of Columbia's motion to file a response to the motion for summary reversal, appellant's consent, the lodged response and appellant's reply thereto, it is

ORDERED that the motion of the District of Columbia to file a response to the motion to expedite is granted and the Clerk shall file the lodged response to the motion to expedite. It is

FURTHER ORDERED that the motion to expedite is denied. It is

FURTHER ORDERED that the motion of appellee Robinson for an extension of time to file a response to the motion for summary reversal is granted and the Clerk shall file the lodged response to the motion for summary reversal. It is

FURTHER ORDERED that the motion of appellee District of Columbia for leave to file a response to the motion for summary reversal is granted and the Clerk shall file the lodged response to the motion for summary reversal. It is

FURTHER ORDERED that appellant's motion for summary reversal is denied. It is

FURTHER ORDERED that the briefs of appellees shall be filed within 30 days from the date of this order. Any request for an extension of time will be looked upon with disfavor and granted only upon a showing of good cause.

PER CURIAM

Copies to:

Honorable Ellen Segal Huvelle

Clerk, Superior Court

Grasty Crews, II, Esquire
450 West Broad Street, Suite 303
P.O. Box 476
Falls Church, VA 22040-0476

Leonard C. Collins, Esquire
471 H Street N.W.
Washington, D.C. 20001-2617

Charles L. Reischel, Esquire
Deputy Corporation Counsel

jb

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 93-CV-1205

FILE
SEP 12 1994
COURT OF APPEALS

MARGARET T. IRVING,
Appellant,

v.

CA10322-92

DISTRICT OF COLUMBIA,
ET AL.,
Appellees.

BEFORE: Steadman and King, Associate Judges, and Newman, Senior Judge.

ORDER

On consideration of the motion of appellee Verna C. Robinson for leave to substitute James H. Moshovitis as a party appellee in her place, and there appearing to be no opposition thereto, it is

ORDERED that the motion is granted and the Clerk shall substitute James H. Moshovitis on the docket in place of Verna C. Robinson, as a party appellee.

PER CURIAM

Copies to:

Honorable Ellen Segal Huvelle

Clerk, Superior Court

Grasty Crews, II, Esquire
450 West Broad Street, Suite 303
P.O. Box 476
Falls Church, VA 22040-0476

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471 H Street N.W.
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Charles L. Reischel, Esquire
Deputy Corporation Counsel

jb

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MARGARET T. IRVING,
Plaintiff

v.

DISTRICT OF COLUMBIA,
and
VERNA C. ROBINSON, *et al.*,
Defendants

92CA-10322 RP

Cal. 13 – Judge Long

ORDER

Upon consideration of the Plaintiff, Margaret T. Irving's, Motion for Summary Judgment, and of the Points and Authorities in Support thereof, and of the Defendants' Opposition to the Plaintiff's Motion for Summary Judgment it is by the Court, this 11 day of March, 1993,

ORDERED, that the Plaintiff's Motion for Summary Judgment be and it is hereby DENIED.

[s] *Ellen Huvelle*
Judge, D.C. Superior Court

cc: Ariel L. Mendez, Esq.
Assistant Corporation Counsel
Community Development Division
51 Street N.E. – Suite 310
Washington, DC 20002-3323

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

IRVING

Plaintiff

vs. CA No. 92-10322

ROBINSON

Defendant

ORDER

Upon consideration of the 3rd motion for Summary Judgment filed by Plaintiff and after hearing argument on behalf of all parties concerned, it is by the Court, this 23 day of August, 1993,

ORDERED:

(1) That the motion be, and it is hereby, DENIED for reasons stated in open court.

(2)

Copies to: Hand delivered in open court.

[s] Ellen Huvelle
JUDGE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

IRVING
Plaintiff
vs.

CA No. 92-10322

DISTRICT OF COLUMBIA
Defendant

ORDER

Upon consideration of the motion for Partial Summary Judgment filed by defendant and after hearing argument on behalf of all parties concerned, it is by the Court, this 23 day of August, 1993,

ORDERED:

(1) That the motion be, and it is hereby, GRANTED.

(2) That defendant is entitled to a deed from the District upon full payment of any amount due and owing.

Copies to: Hand delivered in open court.

[s] Ellen Huvelle
JUDGE

NOTE:-- The "motion for Partial Summary Judgment filed by defendant" referred to in the above order was filed by the defendant Verna C. Robinson. No dispositive motion of any kind was filed by the District of Columbia in the trial court. This note was not part of the order.

Constitutional and Statutory Provisions

THE CONSTITUTION

ARTICLE I, SECTION 8, CLAUSE 17

SECTION. 8. The Congress shall have Power . . .

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . . .

ARTICLE V OF THE AMENDMENTS TO THE CONSTITUTION

No person shall be . . . deprived of . . . property, without due process of law . . . .

DISTRICT OF COLUMBIA CODE, 1981 EDITION

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

* * * * * * *

CHAPTER 9. CLAIMS.

* * * * * * *

§ 20–903. Limitation on presentation of claims against the estate.

(a) *Requirement of presentation; time; limitation.*–– Except as otherwise expressly provided by statute with respect to claims of the United States and the District of Columbia, (1) all claims against a decedent's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, shall be barred against the estate, the personal representative, and the heirs and legatees, unless presented within 6 months after the date of the first publication of notice of the appointment of a personal representative . . . .

(b) *Liens not affected.*--Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, judgment, or other recorded or otherwise perfected security interest on property of the estate.

* * * * * * *

TITLE 47. TAXATION AND FISCAL AFFAIRS

* * * * *

CHAPTER 13. REAL PROPERTY TAX SALES

* * * * *

§ 47-1303. Same -- Sale of property.

(a) Upon the day specified in § 47-1301, the Mayor of the District of Columbia shall proceed to sell or cause to be sold any and all property upon which such taxes remain unpaid, and continue to sell the same every secular day until all real property as aforesaid in § 47-1301 shall have been brought to auction and sold. In case no other person bids the amount due, together with penalties and costs, on any lot, the said Collector of Taxes shall bid the amount due, together with penalties and costs, on the same and purchase it for the District.

(b) * * * * *

(Feb. 28, 1898, 30 Stat. 250, ch. 32, § 2; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(2); 1973 Ed., § 47-1002; June 13, 1990, D.C. Law 8-136, § 7, 37 DCR 2620.)

* * * * *

§ 47-1304. Same -- Deposit required; certificate of sale; tax deed; redemption.

(a) The Collector of Taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full

amount of his bid, including surplus, if any, to the Collector of Taxes within 5 days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said Collector of Taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within 2 days thereafter, the Mayor of the District of Columbia shall set aside both sales for which the bids were made; and the said Collector of Taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said Collector of Taxes shall issue to the purchaser a certificate of sale, and if the property be not redeemed by the owner or owners thereof within 2 years from the last day of sale, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and 1 per centum thereon for each month or part thereof, a deed shall be given by the Mayor of the District, or his successors in office, to the purchaser at such tax sale, his heirs or devisees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein authorized: Provided, that no deed shall be issued unless application therefor be made within 5 years from the last day of sale, and if no such application be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property by paying to the Collector of Taxes for the legal holder of the certificate the amount for which it was sold at such sale, exclusive of surplus, plus interest thereon for the first 2 years after the date of such certificate of sale at the rate hereinabove provided, and for 3 years thereafter at the

rate of 6 per centum per annum; that when the said property is redeemed as aforesaid, the Collector of Taxes shall, within 5 days thereafter notify the owner of record such tax sale certificate at his last known address, by registered mail or by certified mail, of the redemption of such certificate; that within 5 years from the time that payment has been made to the Collector of Taxes to redeem such tax sale certificate, the owner thereof may apply for, and, upon the surrender of the certificate, shall receive from the District of Columbia the payment made as hereinbefore prescribed; that upon the failure of the owner of such tax sale certificate to apply within the period of 5 years, as hereinbefore prescribed, such money shall be forfeited to the District of Columbia, and be deposited by the Collector of Taxes in the Treasury of the United States to the credit of the general revenues of the District of Columbia: Provided, that no deed shall be issued until all taxes and assessments appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: Provided, that no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said Collector of Taxes, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within 2 years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and 1 per centum thereon for each month or part thereof, or if any property 2 years after having been so bid off at any sale in the name of said District under §§ 47–1301 to 47–1310 or any other law in force is not or has not been so redeemed as aforesaid

(unless it shall be shown that the sale for taxes was irregular and void), then the Mayor of the District, or his successors, shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: Provided, however, that no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: And provided also, that minors or other persons under legal disability be allowed 1 year after attaining full age or after the removal of such legal disability to redeem the property so sold, or bid off by the Collector of Taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with 8 per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with 8 per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall be redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: Provided, however, that failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: Provided further, that at any time after any property shall have been bid off as aforesaid by the Collector of Taxes, and before the expiration of the time allowed for the redemption thereof, the Collector of Taxes of said District, may issue to any person or persons, upon the payment of a

sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the Collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within 2 years from the date of such certificate, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and 1 per centum thereon for each month or part thereof, a deed shall be given by the Mayor of the District of Columbia, or his successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the Collector of Taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or cancelled, such property may be readvertised and sold at the next ensuing annual sale.

(b) * * * * *.

(c) * * * * *.

(Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(3); June 25, 1938, 52 Stat. 1201, ch. 702, § 9; Feb. 22, 1944, 58 Stat. 20, ch. 29; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(52); 1973 Ed., § 47-1003; Aug. 9, 1986, D.C. Law 6-135, § 14(a), 33 DCR 3771; Sep. 20, 1989, D.C. Law 8-31, § 5(a), 36 DCR 4750.)

§ 47–1306. Same -- Right of redemption.

(a) The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within 2 years after the last day of sale by paying to the Collector of Taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of 12 per centum per annum after the date of such certificate of sale.

* * * * *

(Feb. 28, 1898, 30 Stat. 250, ch. 32, §4; July 1, 1902, 32 Stat. 635, ch. 1358, §1(4); 1973 Ed., §47–1005.

§ 47–1307. Same -- Report to be filed with Recorder of Deeds; disposition of surplus; redemption.

(a) The Collector of Taxes shall, within 20 days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the Recorder of Deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of Columbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the Collector of Taxes to the credit of the Surplus Fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: Provided, that if any property sold for taxes, as herein provided, is redeemed from such sale within 2 years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. * * * (Feb. 28, 1898, 30 Stat. 252, ch.32, §5; July 1, 1902, 32 Stat. 635, ch. 1358, §1(5); 1973 Ed., §47–1006.)

Analysis of payments made in respect of real property taxes and real property tax sales affecting the subject property between 1985 and 1992

The balance due on **1985** taxes, as of January 1986, was discharged by the Robinsons when they paid $1,784.82 for their purchase at the 1986 tax sale.[1] That sale was not redeemed.

The balance due on **1986** taxes, as of January 1987, was $1,994.95, the amount for which the District itself purchased the property at the 1987 tax sale.[2] Although these taxes accrued in part after the Robinsons' 1986 purchase, the Robinsons have never claimed to have paid them in any way, either directly or indirectly. When so billed by the District in April of 1989, Mrs. Irving paid the District the amount of its purchase, plus an additional $586.65 in interest accrued since that purchase, in full discharge of the liability for 1986 taxes.

The balance due on **1987** taxes, as of January 1988, was $2,352.78, the amount for which the Robinsons purchased the property at the 1988 tax sale.[3] The property was redeemed from that sale by Mrs. Irving when she was billed by the District for the Robinsons' purchase price plus $353.11 in interest accrued since their purchase.[4] The District was required by law to cancel the Robinsons' 1988 tax sale certificate and pay over to them the entire amount of this redemption payment, including interest,[5] and the Robinsons have made no claim that they did not receive it.

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1. Tax sale certificate, Plaintiff's Exhibit H, Record pp. 60–61.

2. Tax bill issued by District of Columbia, Plaintiff's Exhibit A, Record, p. 11, as interpreted by District of Columbia's Answer to Plaintiff's Interrogatory No. 10, Record, p. 167.

3. Id.

4. Id.

5. D.C. Code § 47–1304(a).

The balance due on **1988** taxes, as of January 1989, was $3,178.60, the amount for which the Robinsons purchased the property at the 1989 tax sale.[6] The property was redeemed from that sale by Mrs. Irving when so billed by the District, by her payment to the District of the Robinsons' purchase price plus $95.56 in interest accrued since their purchase.[7] As in the case of their 1988 purchase, the District was required by law to cancel the Robinsons' 1989 tax sale certificate and pay over to them the entire amount of this redemption payment, including interest, and the Robinsons have made no claim that they did not receive it.

The amount due on **1989** taxes as of April 1989, according to the bill submitted to Mrs. Irving, was $2,889.18.[8] Mrs. Irving paid the full amount when billed.[9] The Robinsons have never claimed to have paid any part of the 1989 taxes.

Regular tax bills for **1990** and **1991** were sent by the District to Mrs. Irving and were paid on her behalf by the tenant of the property pursuant to its agreement[10] with Mrs. Irving. *When these payments were completed in June of 1991, Mrs. Irving had effectively paid all of the taxes, including penalties and interest, for the six consecutive tax years 1986 through 1991, inclusive.* As noted above, the taxes for the first three of these years were in arrears at the time Mrs. Irving took possession of the property under color of her decedent's title, and she paid them all within two months of taking possession. She also paid the taxes for the then-current year (1989) at that time. The taxes for the next

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6. Note 2 supra.
7. Id.
8. Id.
9. Id.
10. Affidavit of Margaret T. Irving, ¶ 23, Record, p. 37.

two years were paid by Mrs. Irving's tenant on a current basis.

Unknown to Mrs. Irving, in 1990 the District also sent a bill to the Robinsons for $6,156.76, covering one-half of the **1990** taxes, all of the **1991** taxes, and a liability (apparently previously unknown to all parties) for 1984 taxes.[11] That bill was paid by the Robinsons on September 28, 1990.[12]

The District continued, as it has uninterruptedly since April of 1989, to bill Mrs. Irving for taxes as they came due. At the request of Mrs. Irving in **1992**, the District finally credited the tax account of that property with all payments that had been made on it, and found that as of June 30, 1992, there was a surplus, or overpayment, in the amount of $1,212.00.[13]

The only payments the Robinsons have ever made for which they have not presumably been fully reimbursed with interest were for the purchase they made in 1986 for $1,784.82, and their 1990 payment of $6,156.76, for a total of $7,941.58.

While this case was pending in the Court of Appeals, Mrs. Irving and Mrs. Robinson agreed that should the District be enjoined from issuing a tax deed based on the 1986 sale, Mrs. Irving would reimburse Mrs. Robinson for the $7,941.58 total of her payments, and should the District be ordered to issue a tax deed to Mrs. Robinson, Mrs. Robinson would reimburse Mrs. Irving for her $11,402.83 tax payment made on April 28, 1989. A copy of this agreement was filed in the Court of Appeals with the brief of appellees Robinson and Moshovitis.

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11. Communication from Department of Finance and Revenue, Plaintiff's Exhibit E, Record, p. 15.

12. Receipt issued by Department of Finance and Revenue, Plaintiff's Exhibit I, Record, p. 63.

13. Plaintiff's Exhibit G, Record, p. 18.

Prefatory Note

The following opinion has been cited with approval by both the District of Columbia Court of Appeals and the Superior Court. It is the clearest exposition petitioner's counsel has been able to find setting forth District of Columbia doctrine on the effect of the expiration of the redemption period following a tax sale.

It is reprinted in this Appendix because the Daily Washington Law Reporter, in which it appears in Volume 110 on pages 469 and 473, is not always conveniently accessible, and back issues in bound volumes with their small type and narrow margins do not readily copy well.

DISTRICT OF COLUMBIA v. ALL OF LOT 9, SQUARE 5148, Superior Court of the District of Columbia, Civil Action No. 4095-78, February 2, 1982. *Opinion* per Block, J. *Kurt Berlin* for Scheve. *Edward Abramowitz* for Wanzer Estate. *Martin Grossman* for D.C.

BLOCK, J.: This is a condemnation case in which the normally straightforward determination of just compensation is complicated by conflicting claims of entitlement to the proceeds of the condemnation of lot 10 in Square 5148. The basic issue involves an interplay between the law of eminent domain and that of real property tax sales. Under Chapter 13, Title 47 of the D.C. Code (1981), the District of Columbia may sell private property for delinquent real property taxes. After the property is sold the delinquent taxpayer owner may redeem the property within two years of the sale. If the property is not redeemed, the tax sale purchaser is entitled to a deed for the property upon application made within five years of the sale. In the case before this Court the property was condemned by the District of Columbia after the expiration of the redemption period but before the tax sale purchaser applied for a deed. The question is whether the

delinquent taxpayer owner or the tax sale purchaser is entitled to the proceeds of the condemnation. It is the opinion of this Court that the tax sale purchaser is entitled to the proceeds.

This Court is well aware that the law regarding tax sales often allows seemingly inequitable results. See for example, *Coleman v. Scheve*, 367 A.2d 135 (D.C. App. 1976), especially the dissent by Judge Mack at 140. However, though it may be harsh, the law does serve a proper purpose. The statutory provisions facilitate the government's collection of real property taxes and ample allowance is made for a delinquent taxpayer's tardy recognition of his or her responsibilities. In the present case the property owner did not pay his delinquent taxes and thus redeem the property during the two year period allowed by statute. By that failure the owner lost any present interest in the subject property and so lost any claim to the proceeds from the property's subsequent condemnation.

I.

Initially, the proceeds of the condemnation of Lots 10 and 17 in Square 5148 were at issue. Both lots were sold by the District of Columbia on January 23, 1976 for delinquent real property taxes for fiscal year 1975. D.C. Code 47-1301, et seq. (1981). At the time of the tax sale Charles H. Wanzer[1]

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1. Mr. Wanzer died on February 20, 1978, nearly a month after the expiration of the two year redemption period. The interests of his estate were at first represented by Mr. Jules G. Korner, III, Esquire, who filed the Motion to Determine Entitlement to Condemnation Proceeds on December 1, 1978. The Wanzer estate is now represented by Edward W. Abramowitz, Esquire, who on November 5, 1981, filed a Memorandum in Support of the Right to Condemnation Proceeds of Defendant Lucile Bias, Executrix of the Estate of Charles H. Wanzer.

was the record owner of both properties and the purchasers were Theodore J. and Geraldine E. Scheve.[2]

On April 24, 1978, three months after the expiration of the two year period in which Wanzer could redeem the property (D.C. Code 47–1304, 1306 (1981)), both lots were condemned by the District of Columbia pursuant to Chapter 13, Title 16 of the D.C. Code (1981) and the instant case, Civil Action No. 4095–78. Importantly, as far as Wanzer's present argument is concerned, the condemnation took place before the Scheves applied for the deeds to which they were entitled as tax sale purchasers. D.C. Code 47–1304 (1981). When the Scheves did apply for a deed for Lot 10 on December 4, 1978, their application was rejected, presumably because the District of Columbia had received title to the property pursuant to its condemnation of the property nearly seven and a half months earlier. The Scheve's attempt to obtain title to Lot 17 also was stymied, though only temporarily. A prior tax sale purchaser challenged the right of the Scheves to receive the deed for Lot 17, on grounds not relevant here (*Robinson* v. *Washington, et al.*, CA6598–78, filed June 26, 1978). The Scheves prevailed and by a June 14, 1979 Consent Order the District of Columbia was directed to issue a deed for Lot 17 to the Scheves *nunc pro tunc* as of April 24, 1978. This action made the Scheves the owners of Lot 17 on the date of the condemnation, and indeed Wanzer now concedes he has no claim to the proceeds of the condemnation of Lot 17.[3] Accordingly, only the question of the

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2. The Scheves are represented by Kurt Berlin, Esquire, who filed a memorandum in support of Defendants Theodore J. and Geraldine E. Scheve's Right to Condemnation Proceeds on October 22, 1981.

3. See n. 1 in the November 5, 1981, Wanzer Memorandum (referred to above in n. 1).

entitlement to the compensation for the condemnation of Lot 10 is before this Court.

II.

The issue is whether ownership of the condemned Lot 10 rests with Wanzer, the owner of record at the time of condemnation who had failed to redeem the property, or with the Scheves, the purchasers at a tax sale held before the condemnation who did not apply for a deed until after the condemnation.[4] The resolution of this issue depends upon an assessment of the significance of the expiration of the two year redemption period prior to the condemnation.

The basic outline of the tax sale process is as follows: (1) "If the taxes due . . . shall not be paid prior to the day fixed for sale, the property will be sold . . . at public auction" (D.C. Code 47–1301 (1981)); (2) At the auction the winning bid must be "sufficient to meet the amount of tax, penalty, and costs" (*ibid.*, §47–1304); and (3) "Immediately after the close of the sale, upon payment of the purchase money [due within five days], the said Collector of Taxes shall issue to the purchaser a certificate of sale . . . ." *ibid.*

The plain meaning of the statute is that the real property is sold to satisfy the government's claim for delinquent taxes.[5] However, given that the delinquent taxpayer owner

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4. For a general discussion, see "Rights in Respect of Real Estate Taxes Where Property is Taken in Eminent Domain," 45 A.L.R.2d 522, 559.

5. Our Court of Appeals has consistently spoken of the tax sale as a sale of property. *Boddie v. Robinson*, 430 A.2d 519, 521 (D.C. App. 1981), *Watson v. Scheve*, 424 A.2d 1089 (D.C. App. 1980), *Coleman v. Scheve*, 367 A.2d 135 (D.C. App. 1976). A contrary view is revealed by the Ninth Circuit's statement, when interpreting a California statute, that a tax sale is not even a sale but "merely a book transaction to facilitate the adjustment of accounts . . . [citations omitted]." *Weber v. Wells*, 154 F.2d 1004,

has two years from the sale in which to redeem the property, it cannot be said that the tax sale purchaser receives full title at the sale. The purchaser acquires an imperfect title, a conditional interest which becomes absolute upon the failure of the record owner to redeem within the statutory period. *Hunter v. McKlveen*, 45 A.2d 222, 224 (S.Ct.Pa. 1946), *Canino v. Englestein*, 385 N.Y.S.2d 736, 738 (S.Ct. Onandaga Cty. N.Y. 1976); *U.S. v. Certain Lands in Town of Hempstead, Nassau Cty., N.Y.*, 129 F.2d 918, 919 (2nd Cir. 1942), *In Re Ueck's Estate*, 35 N.E.2d 624, 631 (C.A.N.Y. 1941), *U.S. v. Gen. Douglas MacArthur Sr. Village, Inc.*, 366 F. Supp. 302, 304 (E.D.N.Y. 1973), aff'd, 508 F.2d 377 (2nd Cir. 1974). *Contra., In Re County of Nassau*, 301 N.Y.S.2d 564, 567 (C.A.N.Y. 1969), *Weber v. Wells, supra*, n.5.

In the cases from other jurisdictions where the basic problem was, as here, the effect of a condemnation on a tax sale purchaser's interest, the subject properties were all condemned during the redemption period.[6] This fact led a number of the courts to define, largely on the basis of statutory language, the nature of the conditional interest acquired by the tax sale purchaser. If it was merely a lien, the condemnation could extinguish the purchaser's interest, leaving only an equitable lien to the extent of the initial tax lien. *In re Cty. of Nassau, supra.* If it was an inchoate right, analogous to dower, it might survive the condemnation or it might not. *Cf. U.S. v. Certain Lands in Hempstead, supra*, and *Montague v. Kunzig*, 143 U.S. App. D.C. 206, 210 (1971).

In the present case the interest was no longer conditional at the time of the condemnation and so it is not necessary to

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1005 (9th Cir. 1946).

6. *Hunter v. McKlveen, supra, U.S. v. Certain Lands in Hempstead, supra, In Re Cty. of Nassau, supra,* and *Weber v. Wells, supra.*

strictly define the nature of the tax sale purchaser's interest. The tax sale purchaser's inchoate interest matures upon the failure of the owner to redeem the property and the purchaser's title thereupon can be perfected:

> *[I]f the property shall not be redeemed by the owner . . . within 2 years from the last day of sale,* by payment . . . [of] . . . the amount for which it was sold at such sale . . . *a deed shall be given . . . to the purchaser at such tax sale* . . . . Provided, that no deed shall be issued unless application therefor be made within 5 years from the last day of sale, and if no such application be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property . . . [and] . . . . Provided, that no deed shall be issued until all taxes and assessments appearing upon the tax books against the property are paid, with penalties, interests, and costs ... .

D.C. Code 47-1304 (1981) (emphasis added by the Court). While there is a secondary right of redemption, conditioned upon the purchaser's failure to apply for a deed (and satisfy any outstanding obligations to D.C.) within five years of the sale, for the three years following the redemption period, the purchaser alone has a present interest in the property.[7] *Industrial Bank of Washington v. Sheve* (sic), 307 F. Supp. 98, 99 (D.C.D.C. 1969), *Hunter v. McKlveen, supra.*

The occurrence of the condemnation should not disturb what the expiration of the redemption period had already settled. As the U.S. Court of Appeals for the Second Circuit said in *U.S. v. Certain Lands in Hempstead, supra*, "Condemnation should affect the rights of parties having interests

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7. This is as against the owner; if the property is the subject of another tax sale it is possible another purchaser may obtain the deed--as occurred with Lot 17. *Gray Properties, Inc. v. Tobriner*, 123 U.S. App. D.C. 150, 151 (1966).

in respect to the land taken only so far as necessary to assure the sovereign's title."[8] It should not provide a mechanism by which a person recovers a property interest already taken away by statute. Accordingly, this Court must conclude that as Wanzer lost all interest in Lot 10 when he did not redeem within the statutory period, he (or his estate) has no claim to the proceeds of the subsequent condemnation,

Wherefore, it is this 2nd day of February, 1982

ORDERED, that defendants Theodore J. Scheve and Geraldine E. Scheve are entitled to receive the proceeds of the condemnation of Lot 10 in Square 5148, less any outstanding obligations on the property to the District of Columbia pursuant to D.C. Code 47–1304 (1981).

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8. Because a condemnation award takes the place of the property, (*D.C.R.L.A. v. Eleven Parcels, etc.*, 191 U.S. App. D.C. 105, 107, 589 F.2d 628 (1978)), had the redemption period not expired in the instant case, Wanzer reasonably could be required "to redeem in order to obtain the award just as he would have to do to recover the land, had the condemnation not intervened." *U.S. v. Certain Lands in Hempstead, supra.*

Supreme Court, U.S.
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No. 95-1116

IN THE

Supreme Court of the United States

October Term, 1995

MARGARET T. IRVING

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

REPLY TO BRIEF IN OPPOSITION

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

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Petitioner,

v.

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On Petition for a Writ of Certiorari
to the District of Columbia
Court of Appeals

REPLY TO BRIEF IN OPPOSITION

I. The Second Sentence of Rule 10

Respondent Moshovitis begins his argument against the exercise of certiorari jurisdiction with a quotation from this Court's Rule 10 which leaves out the critical second sentence of its opening paragraph (emphasis added):

> The following, although *neither controlling nor fully measuring the Court's discretion*, indicate the *character* of the reasons the Court considers:

The petitioner argues that the District of Columbia Court of Appeals has firmly adopted a doctrine which sanctions the use of the governmental power to impose a forfeiture in a manner which conflicts with the constitutional guarantee of due process. That is an extremely serious matter whose

implications go well beyond District of Columbia real property tax law, and is clearly of the character indicated in subparagraph (c) of Rule 10.[1]

II. Effects of the Partial Settlement Agreement

When the notice of appeal was filed in the trial court, the question of a stay pending appeal was presented to that court. Both Mrs. Irving and Mrs. Robinson realized that, in view of the character and location of the property, it was essential that it be occupied and maintained throughout any appellate proceedings, or otherwise whoever won would have only a Pyrrhic victory. Accordingly, they entered into a three-party agreement with the tenant, whereby the tenant was obliged to continue occupancy, to pay taxes, and to provide maintenance and security at its own expense, until such time as the litigation was concluded, when the tenant would be obligated to purchase the property, at a price fixed in the agreement, from whoever might be determined to be the owner. The trial court granted a stay conditioned upon the performance of this agreement.

In the trial court, Mrs. Robinson had demanded "Damages for delay caused by the interference by the plaintiff with Mrs. Robinson's contractual rights."[2] Both Mrs. Irving and Mrs. Robinson understood that the costs of litigating this claim could be out of all proportion to any benefit to either party, given the extended period of time involved, the poor state of

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1. Subparagraph (c) of Rule 10 reads as follows:

> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

2. Paragraph 3 of the prayer for relief in the Answer, Counterclaim, and Cross-claim filed by Mrs. Robinson in the trial court, Record, p. 23.

some of the records, and the debatability of applicable accounting principles. Accordingly, they agreed to settle that issue by providing, in the three-party agreement, that the prevailing party on the tax deed issue would reimburse the losing party to the extent of the losing party's payment of certain taxes that would otherwise be a charge against the property. The dollar amounts of such payments, $11,402.83 in the case of Mrs. Irving and $7,941.58 in the case of Mrs. Robinson, were specified in the agreement.

In entering into this agreement, neither party had the slightest intention of waiving or abandoning any claim or defense she might have on the main issue, *viz.*, whether Mrs. Robinson was entitled to a mandatory injunction for the issuance of a tax deed to a property which, when this case was filed, was assessed by the Department of Finance and Revenue at $170,000.00.[3] Neither party advanced any such contention in the Court of Appeals, and it is simply frivolous for respondent Moshovitis to advance it in this Court, as he has done at pages 5 and 9 of his brief in opposition.

At page 2 of that brief, he makes the equally untenable argument that the partial settlement agreement precludes review by this Court because it prescribes what is to be done upon final judgment, and that the judgment of the Court of Appeals entered October 16, 1995, is such a judgment. An appellate judgment, however, is not final until the mandate issues, and the rules of the Court of Appeals provide for stays to permit application to the Supreme Court for a writ of certiorari. In the case at bar, the Court of Appeals, by order, stayed the issuance of the mandate until January 15, 1996, for this purpose. The petition herein was filed on January 11, 1996, and the clerk of this Court so notified the clerk of the Court of Appeals, thereby triggering a further automatic stay

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3. Tax bill issued in June of 1992, Plaintiff's Exhibit G, Record, p. 18.

under that court's Rule 41(b) "until final disposition by the Supreme Court of the petition."

III. The Interval Between Application and Payment

Petitioner has argued that during the interval between the expiration of the redemption period on the Robinson's 1986 tax sale purchase, and the earliest possible date on which the Robinsons could be said to have satisfied the statutory requirements for the issuance of a tax deed, the District of Columbia fatally compromised its own power to forfeit the property interests of Mrs. Irving. The respondent District of Columbia itself has offered no response to that argument.

A response offered by the respondent Moshovitis is the demonstrably false suggestion that no such interval existed. At page 2 of his brief in opposition, he asserts--

> First, the respondents [*sic*] applied for a tax deed on the subject property by surrendering to the District the tax sale certificate they had received subsequent to the 1986 tax sale, along with the money to pay the outstanding taxes, penalties, and interest.

In fact, some 32 months elapsed between the surrender of the tax sale certificate and the first and only tax deed payment the Robinsons ever made on this property. Mrs. Robinson never made any attempt to mislead the lower courts on this point. In her brief in the Court of Appeals, she said at page 4--

> In January of 1988, Appellee Verna C. Robinson surrendered the tax sale certificate obtained at the 1986 tax sale to the District of Columbia Department of Finance and Revenue for the issuance of a tax deed.

and at page 5 of that brief she said--

> On September 28, 1990, Appellee Robinson paid $6,176.56 to the District, which was the amount necessary to obtain the tax deed.

So much for the contention that Mrs. Robinson surrendered her tax sale certificate "along with" the money to pay outstanding taxes.

The reason for the "along with" representation is obvious. If it were in fact true, Mrs. Robinson's assignee, the private respondent here, would be in a better position to seek the benefit of the equitable conversion doctrine, under which Mrs. Robinson could be treated as if she had already acquired the property before it passed to Mrs. Irving, even though no deed had been issued.

In this connection it should be noted that the application for the deed, reproduced at pages 60 and 61 of the Record, is not a bilateral contract or agreement. An applicant who declines to make the necessary payment is entirely free to walk away from the deal, a very real possibility in an era of declining values and potential liabilities for environmental hazards unknown at the time of application. To treat such an applicant as having acquired ownership for any and all purposes is insupportable on any theory.

IV. Lack of Notice to the Petitioner

The private respondent's brief emphasizes that the 1986 tax sale was conducted in accordance with the statute up to the end of the redemption period, but the fallacy of the brief is in its assertion that that is the end of the story. The complete tax sale process includes the transactions that occur after the running of the redemption period. The absolutist language of *District of Columbia v. All of Lot 9, Square 5148*[4] can work without infringing constitutional rights as long as it is limited to an analysis of the rights of the tax sale buyer against the record owner in situations where there has been no change in record ownership and the District has

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4. 110 Daily Wash.L.Rptr. 469 (D.C. Super.Ct. 1982), also reprinted at page A26 of the petition herein.

performed its duties as contemplated in the statutory scheme, but that is not this case.

Respondent Moshovitis argues at page 4 of his brief--

> [P]etitioner was not deprived of the subject property without due process, because petitioner as well as petitioner's predecessor in title, were afforded adequate notice and an opportunity to redeem the subject property pursuant to District of Columbia law.

The fact is that the petitioner neither was afforded, nor, under District of Columbia law, could have been afforded an opportunity to redeem the 1986 sale, because it was not until more than a year after the expiration of the redemption period that she had any interest in the property whatsoever.

As for constructive notice, that is generally a legal fiction which is employed when for whatever reason actual notice is not reasonably possible. It defies common sense to maintain that timely notice of the 1986 tax sale was given to this petitioner when promptly after assuming her duties as personal representative, she sent her agent directly to the source, the Department of Finance and Revenue, and was not only given no notice of an irredeemable tax sale, but was presented with a bill for taxes wholly inconsistent with loss of ownership of the property.

Respondent Moshovitis cites *Frassetto v. Barry*[5] and *Kann v. King*[6] in support of his contention that adequate notice was given, but the constitutional adequacy of notice was never an issue in either of those cases. In each of them, the Court of Appeals held that the notice given did not meet *statutory* requirements, and thus there was no occasion to consider a constitutional issue. No further review of *Frass-*

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5. 497 A.2d 109 (D.C. 1985).

6. 25 App. D.C. 182 (1905), *reversed*, 204 U.S. 43, 27 S.Ct. 213, 51 L.Ed. 360 (1907).

etto was sought, and no mention of notice was made in the opinion of this Court reversing the Court of Appeals decision in *Kann v. King*, that case going off on equitable rights as between landlord and tenant.

We agree with respondent Moshovitis that the dictum he cites in *Malone v. Robinson*[7] supports his position. That is why we feel it is so important that this Court grant this petition. There was no occasion to test the validity of that dictum by a petition to this Court, because the case was sent back to the trial court for further proceedings to determine whether a District of Columbia regulation in respect of notice had been complied with. That regulation has no application to the case at bar, because it deals with notice required *before* the expiration of the redemption period, and that brings us to the final fallacy in the respondent's brief.

V. The Frozen Interest Fallacy

The argument of respondent Moshovitis asserts that the entire property interest of the petitioner entitled to due process protection was frozen as of the instant of her decedent's death, ignoring the fact that she sued "Individually and as Personal Representative of Harold R. Kyles, Deceased."[8] As the petitioner repeatedly argued in the courts below, ownership of commercial property in a high-crime urban area involves an ongoing input of time, attention, and money, not to mention worry and risk. The respondent's simplistic analysis is simply inadequate to cope with the reality.

The value of this property represents a significant proportion of an individual's net worth. In the two and a quarter year interval between the death of the decedent and the first indication she received that there might be an adverse claim, important and irrevocable decisions and investments had to

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7. 614 A.2d 33, 35, n.4 (D.C. 1992).

8. Caption of Plaintiff's 2nd Amended Complaint, Record, p. 2.

be made not just for her benefit but for that of the community as well. Margaret Irving made them in good faith. If the District now proceeds to forfeit the property whose preservation is the fruit of her stewardship, she will have been the victim of a course of action by the District which, if carried out by any private individual or organization, would by the mildest terminology be classified as constructive fraud. Such a course of action by a government can not be called due process of law.

Respectfully submitted,

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Counsel for petitioner.

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IN THE

Supreme Court of the United States

October Term, 1995

MARGARET T. IRVING

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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24 pp

QUESTIONS PRESENTED

1. Should this Honorable Court exercise its discretionary jurisdiction and grant petitioner a writ of certiorari absent a showing by the petitioner of extraordinary and compelling reasons therefor?

2. Does the filing of a tax sale report as required by D.C. Code § 47-1307 with the District of Columbia Recorder of Deeds, the repository of all the land records of the District of Columbia, constitute notice for purposes of determining whether the requirements of due process are fulfilled?

3. May a petitioner claim that her constitutional rights to due process are violated where any detriment petitioner suffered as a result of her reliance on an alleged misrepresentation by a government agency was remedied by the provisions of a settlement agreement the terms of which petitioner settled her claim to funds expended by her in attempting to untimely redeem real property lawfully sold at a tax sale?

PARTIES TO THE PROCEEDING IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MARGARET T. IRVING, APPELLANT
DISTRICT OF COLUMBIA, APPELLEE
VERNA C. ROBINSON, APPELLEE
JAMES H. MOSHOVITIS, APPELLEE

Verna C. Robinson was the sole individual appellee when the case was docketed in the District of Columbia Court of Appeals on September 20, 1993. By order filed September 12, 1994, reproduced herein at A12, the Clerk was ordered to "substitute James H. Moshovitis on the docket in place of Verna C. Robinson, as a party appellee."

There were no corporate parties to the proceeding in the Court of Appeals.

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Irving v. District of Columbia, 665 A.2d 980 (D.C. 1995). There were no other official or unofficial reports of opinions or orders in the case.

Basis for jurisdiction in this Court

The judgment sought to be reviewed was entered October 16, 1995. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257.

IN THE

Supreme Court of the United States

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On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

---

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RESPONDENT'S SUPPLEMENT TO PETITIONER'S STATEMENT OF THE CASE

While respondents do not substantially disagree with the Statement of the Case as set forth by the petitioner, pursuant to Supreme Court Rule 15, respondents wish to supplement the petitioner's Statement of the Case with the addition of the following facts.

First, the opinion of the District of Columbia Court of Appeals points out on page A4 of petitioner's brief in support of Petition for a Writ of Certiorari that the parties to this litigation agreed on a settlement contingent upon the outcome of the appeal in this case and final judgment by the District of Columbia Court of Appeals. Petition for Writ of Certiorari Brief at A4 and A25.

The terms of the settlement were that if the final judgment in this litigation was adverse to the petitioner, respondents would repay to the petitioner $11,403.82, the sum which the petitioner had paid to the government of the District of Columbia ("District"); and if the final ruling was in favor of the petitioner, the petitioner would pay to the respondents $6,156.76, the sum which the respondents had paid to the District on September 28, 1990 in order to receive a tax deed from the 1986 tax sale. *See* Petition for Writ of Certiorari Brief at A25. In addition, the settlement provided that both sides would honor the lease with the tenant occupying the subject property. *Id.* The lease required the tenant to maintain the property and to pay all taxes and keep the subject property insured.*Id.*

Second, the petitioner in the trial court first challenged the tax sale on the grounds that the District's filing of the tax report of the 1986 tax sale, which is required under D.C. Code section 47-1307, was made too late in the day though it was filed on the 20th day pursuant to D.C. law. The petitioner abandoned this argument in the District of Columbia Court of Appeals.

Third, after the two-year redemption period expired in 1988, the respondents protected their interest in the subject property in two ways. First, the respondents applied for a tax deed on the subject property by surrendering to the District the tax sale certificate they had received subsequent to the 1986 tax sale, along with the money to pay the outstanding taxes, penalties, and interest. *See* D.C. Code § 47-1304(a) (1981, as amended). However, because of a large administrative backlog in the District Department of Finance, the respondents had not yet received a deed to the property by the time the instant action had begun in 1992. *See* Court of Appeal Judgment and Opinion reproduced in its entirety in Petition for Writ

of Certiorari Brief at p. A2-3. In the meantime, the respondents continued to bid on the subject property at the subsequent 1988 and 1989 tax sales and paid some of the taxes on the property as they became due. *Id.; see also* A25 of the Petition for Writ for Certiorari Brief. Thus, respondents did everything in their power to obtain a tax deed once the redemption period expired.

ARGUMENT

I. This Court should not exercise its discretional jurisdiction over this matter because it does not involve an important and compelling question of *constitutional law.*

Title 28, section 1257 of the United States Code provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties of the or statutes of or any commission held or authority exercised under the United States.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. § 1257.

In accord with 28 U.S.C. § 1257, Supreme Court Rule 10 provides in pertinent part:

> **Considerations Governing Review on Writ of Certiorari**
>
> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted **only** when there are **special and important reasons therefor...**
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court of a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court. . .

Rule 10. [emphasis supplied].

Writ of certiorari should be denied in the instant case because this matter does not involve the validity of a United States treaty, any United States or state law, and does not involve any special or compelling reasons for review by this Honorable Court. Indeed, the only remotely related constitutional claim in this case is that somehow the petitioner was deprived of a property interest without due process of law. *See* Petition of Writ of Certiorari Brief at 10-11. As is set forth below, petitioner was not deprived of the subject property without due process, because petitioner as well as the petitioner's predecessor in title, were afforded adequate notice and an opportunity to redeem the subject property pursuant to District of Columbia law. Moreover, the parties to this action, with the

assistance of counsel, executed a settlement agreement the terms of which fully reimburse the petitioner for any losses she may have incurred in relying on an alleged misrepresentation of the District as to the status of the taxes on the subject property, which petitioner paid in unsuccessfully attempting to redeem the subject property after it had been sold at tax sale as a result of the failure of the original owner to pay real property taxes. As a result, petitioner's claim that she was misled to her detriment is not an issue in this case, and does not constitute a compelling reason or circumstance to grant a writ of certiorari in this case.

It is well settled law that the District of Columbia government ("District") is authorized by statute to sell real property for non-payment of property taxes. D.C.Code § 47-1304 (1981, as amended). Under D.C.Code section 47-1304, the District must sell all property for which taxes are in arrears to the highest bidder at public auction. Once the winning bid is paid, the Collector of Taxes must issue a certificate of sale. The owner of record may redeem the property within two years after the sale by paying the District the amount for which the property was sold. If the owner does not do so, the purchaser then has three more years in which to apply for a tax deed to the property. Once these conditions are met and the purchaser pays all taxes and penalties owed, "a deed shall be given by the Mayor . . . .to the purchaser at such tax sale . . . or to the assignee of such certificate [of sale]". D.C. Code § 47-1304(a).

It is also well settled law that the District must file with the Recorder of Deeds a report of sale of all real property sold at tax sale describing each property sold, the tax and penalty and other charges due, the name of the purchaser, the sale price, the date on which the property was sold, the costs of the sale involved, and the surplus bid for the property if any.

D.C. Title 47, § 1307 (1981, as amended). Further, in the case of *Frassetto v. Barry,* 497 A.2d 109 (D.C.App. 1985), the District of Columbia Court of Appeals held that the requirement of filing a report of sale was to give further and explicit notice to the citizen whose property had been included in the tax sale and who was about to lose their property as a result of delinquent real property taxes, to warn of the danger of the impending transfer of property and to give the property owner ample information as to what should be done in order to redeem the property from such a transfer. Accordingly, filing the tax sale report gives constructive notice to any and all interested persons of the tax sale.

In reaching its holding in *Frassetto,* the court of appeals stated that because:

> . . . the office of the Recorder of Deeds is the public repository for all land records and that Congress, in selecting that office as the filing situs, must accordingly have intended that the required recording of tax sale reports serve a public notice function . . . The District is required to file§ 47-1307 reports shortly after the tax sale is held, early in the period of redemption when the record owner retaines the right to avoid a final conveyance of his property by paying the delinquent tax bill. Such timely notice may be significant to the owner . . . , for in the event that-as alleged in this case-the owner failed to receive a mailed notice of delinquency and impending tax sale, or to see a tax sale advertised in a local newspaper, an inspection of the public record at the Recorder of Deeds office may be the only practical way, or at least the most certain way for the owner to learn that a tax sale has taken place and to redeem the property in time.

Frasetto, 497 A.2d at 113. Thus, it is clear that even in the absence of all other forms of notice, the filing of the tax sale report at the Recorder of Deeds, in accordance with D.C.Code section 47-1006, fulfills the notice requirement of due process.

Indeed, as the United States Court of Appeals for the District of Columbia Circuit stated in its decision in *Kann v. King*, 25 U.S.App.D.C. 182, __ F.2d __ (1905) *rev'd on other grounds*, 204 U.S. 43, 27 S.Ct. 213, 51 L.Ed. 360 (1907), the purpose of section 47-1006 is plain, it is ". . . to give further and explicit notice to the citizen whose property was affected and was about to be taken from him, to warn of the danger, and give ample information as what was required to be done in order that he might relieve his property from its predicament." *Id.*

In the instant case, petitioner argues that filing of the tax report is somehow distinguishable from recording documents related to the transfer of real property. Petition for Writ of Certiorari Brief at p. 11-12. For the reasons cited in both *Frassetto* and *King*, regardless of the type of recordation involved, the fact that the tax sale report and all its included information is available at the Recorder of Deeds suffices to fulfill notice requirements under due process. Therefore, the filing of the tax sale report gave petitioner constructive knowledge of the tax sale of the subject property to the respondents in January of 1986, and the petitioner's first argument that she did not have either actual or constructive notice of the tax sale fails.

Further, it is important to note that this argument was never raised in the appeal of this case, nor was the issue of the validity of the tax sale itself raised at any time despite the fact the petitioner had been given every opportunity to do so. Thus, the tax sale of the subject property to the respondents stands uncontested and therefore valid, and the petitioner cannot now claim that it should be invalidated because the requirements of

due process were not satisfied. Moreover, the petitioner as the personal representative and heir of the original owner has no more right to the subject property than that of the original owner, her son, the decedent Mr. Kyles.

Because the petitioner in effect, "stepped in to the shoes" of the original property owner, Mr. Kyles, upon his demise, and Mr. Kyles had lost all right to redeem the subject property after the respondents relinquished their tax certificate, applied for a tax deed and requested a corresponding balance to be paid as calculated by the District, there is no cognizable claim that can be made by the petitioner of an alleged failure on the part of the District to have properly conducted the tax sale and given adequate and proper notice of the tax sale to the original owner, Mr. Kyles. It follows that the decedent could not have had any interest in the property after the expiration of the period of redemption, and as a result, the petitioner had no interest to convey to herself as the heir of the original owner. *Malone v. Robinson*, 614 A.2d 33, 35, n.4 (D.C.App. 1992).

Because the respondents were the only persons with an interest in the subject property at the end of the redemption period and after the time the respondents applied for a tax deed, the petitioner's reliance on the Probate Reform Act is inapplicable. As the panel of three judges unanimously concurred in their ruling on this case, since the original owner no longer had an interest in the property after the redemption period expired in 1988, his estate could not acquire any interest in the property upon his death in 1989. As a result, there was no need for the respondents to make a claim against his estate under the Probate Reform Act.

However, even if this is an incorrect interpretation of the significance of the events which occurred and an incorrect application of the Probate Reform Act, petitioner cites no reason

why said act or its application violate federal or constitutional law or principles, nor has petitioner cited a split of authority among the state or circuit courts of appeal on this precise issue. Moreover, the petitioner has not stated any compelling reasons why this Court should grant a writ of certiorari. While petitioner clearly argues that the outcome of this case is unfair to her individually, she has not asserted how this matter affects the public at large on a constitutional level, nor has she included any evidence or statistics to support the contention that other property owners suffer under the law that governs tax sales within the District of Columbia. Accordingly, the petition for writ for certiorari should be denied.

Finally, the petitioner and respondent have settled her claim that she suffered a loss for which she has not been fully compensated. The parties, with the assistance of counsel, have executed a settlement agreement whereby the petitioner will be fully repaid for all monies she expended in attempting to save the subject property from tax sale. *See* Petition for Writ of Certiorari Brief at A25. Thus, the petitioner has been made whole and the status quo has been returned to that of the time before the petitioner was allegedly led by the District of Columbia to believe she held an interest in the subject property. As a result, petitioner has settled her claim of injury or deprivation of any right, title or interest that she otherwise held prior to her involvement in this matter as the original owner's personal representative and heir.

SUMMARY

Simply stated, this is a private matter where one party, petitioner, is now challenging a tax deed which was properly issued to respondent, whose interests were prior in time and priority to that of the petitioner. Petitioner received constructive notice of the tax sale of the subject property to the respondents

before she allegedly relied upon the representations of the District agency regarding the status of the real property taxes assessed against the subject property, and petitioner will be reimbursed for monies she expended in reliance on the District's representations pursuant to the terms of the settlement agreement executed by the parties. Petitioner has failed to show how this private dispute, the resolution of which was decided by summary judgment at the trial court level and unanimously affirmed by the District of Columbia Court of Appeals, involves important and compelling, constitutional or otherwise issues affecting the public at large. Accordingly, the respondents respectfully request that the petition for a writ of certiorari be denied.

CONCLUSION

For the foregoing reasons, the respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX A

USCS

USCS§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch 646, § 1, 62 Stat. 929; July 29, 1970, P.L. 91-358, Title I, Part D, Subpart 2, § 172(a)(1), 84 Stat. 590; June 27, 1988, P.L. 100-352, § 3, 102 Stat. 662).

D.C. CODE

* * * * *

§ 47-1304. Same — Deposit required; certificate of sale; tax deed; redemption.

(a) The Collector of Taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full amount of his bid, including surplus, if any, to the Collector of Taxes within 5 days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said Collector of Taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within 2 days thereafter, the Mayor of the District of Columbia shall set aside both sales for which the bids were made; and the said Collector of Taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said Collector of Taxes shall issue to the purchaser a certificate of sale, and if the property be not redeemed by the owner or owners thereof within 2 years from the last day of sale, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and 1 per centum thereon for each month or part thereof, a deed shall be given by the Mayor of the District, or his successors in office, to the purchaser at such tax sale, his heirs or devisees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said

sale herein authorized: Provided, that no deed shall be issued unless application therefor be made within 5 years from the last day of sale, and if no such aplication be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property by paying to the Collector of Taxes for the legal holder of the certificate the amount for which it was sold at such sale, exclusive of surplus, plus interest thereon for the first 2 years after the date of such certificate of sale at the rate hereinabove provided, and for 3 years thereafter at the rate of 6 per centum per annum; that when the said property is redeemed as aforesaid, the Collector of Taxes shall, within 5 days thereafter notify the owner of record such tax sale certificate at his last known address, by registered mail or by certified mail, of the redemption of such certificate; that within 5 years from the time that payment has been made to the Collector of Taxes to redeem such tax sale certificate, the owner thereof may apply for, and, upon the surrender of the certificate, shall receive from the District of Columbia the payment made as hereinbefore prescribed; that upon the failure of the owner of such tax sale certificate to apply within the period of 5 years, as hereinbefore prescribed, such money shall be forefeited to the District of Columbia, and be deposited by the Collector of Taxes in the Treasury of the United States to the credit of the general revenues of the District of Columbia: Provided, that no deed shall be issued until all taxes and assessment appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: Provided, that no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said Collector of Taxes, in the name of the District of Columbia;

but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within 2 years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and 1 per centum thereon for each month or part thereof, or if any property 2 years after having been so bid off at any sale in the name of said District under §§ 47-1301 to 47-1310 or any other law in force is not or has not been so redeemed as aforesaid (unless it shall be shown that the sale for taxes was irregular and void), then the Mayor of the District, or his successors, shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: Provided, however, that no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: And provided also, that minors or other persons under legal disability be allowed 1 year after attaining full age or after the removal of such legal disability to redeem the property so sold or bid off by the Collector of Taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with 8 per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with 8 per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall, be

redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: Provided, however, that failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: Provided further, that at any time after any property shall have been bid off as aforesaid by the Collector of Taxes, and before the expiration of the time allowed for the redemption thereof, the Collector of Taxes of said District, may issue to any person or persons, upon the payment of a sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the Collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within 2 years from the date of such certificate, by payment to the Collector of Taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and 1 percentum thereon for each month or part thereof, a deed shall be given by the Mayor of the District of Columbia, or his successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the Collector of Taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District

of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or cancelled, such property may be readvertised and sold at the next ensuing annual sale.

(b) * * * * * * *

(c) * * * * * * *

(Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(3); June 25, 1938, 52 Stat. 1201, ch. 702 § 9; Feb. 22, 1944, 58 Stat. 20, ch. 29; June 11, 1960, 74 Stat. 203; Pub. L. 86-507, § 1(52); 1973 Ed., § 47-1003; Aug. 9, 1986, D.C. Law 6-135, § 14(a), 33 DCR 3771, Sep. 20, 1989, D.C. Law 8-31, § 5(a), 36 DCR 4750.)

* * * * *

§ 47-1307. Same — Report to be filed with Recorder of Deeds; disposition of surplus; redemption.

(a) The Collector of Taxes shall, within 20 days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the Recorder of Deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of COlumbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the Collector of Taxes to the credit of the Surplus Fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: Provided, that if any property sold for taxes, as herein

provided, is redeemed from such sale within 2 years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. * * * (Feb. 28, 1898, 30 Stat. 252, ch.32, §5; July 1, 1902, 32 Stat. 635, ch. 1358, §1(5); 1973 Ed., §47-1006.)